96-62

TO ENHANCE THE SAFETY MISSION OF THE FAA

(96–62)

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

H.R. 6771

TO PROVIDE THAT THE FEDERAL AVIATION ADMINISTRATION SHALL ONLY PERFORM FUNCTIONS RELATING TO AVIATION SAFETY, AND FOR OTHER PURPOSES

H.R. 351

TO ESTABLISH AN INDEPENDENT FEDERAL AVIATION AGENCY, AND FOR OTHER PURPOSES

H.R. 7850

TO IMPROVE THE OPERATION OF THE FEDERAL GOVERNMENT'S AVIATION SAFETY ACTIVITIES, TO ESTABLISH A NEW AIR SAFETY ADMINISTRATION, TO IMPROVE THE ORGANIZATION AND OPERATION OF THE NATIONAL AIR TRAFFIC CONTROL SYSTEM, AND FOR OTHER PURPOSES

AUGUST 20 AND 21, 1980

Printed for the use of the Committee on Public Works and Transportation

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AUGUST 20 AND 21, 1980

Printed for the use of the Committee on Public Works and Transportation

U.S. GOVERNMENT PRINTING OFFICE
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Report by the Comptroller General of the United States, "How to Improve the Federal Aviation Administration's Ability To Deal With Safety Hazards," February 29, 1980.

*Retained in file.

TO ENHANCE THE SAFETY MISSION OF THE FAA

WEDNESDAY, AUGUST 20, 1980

House of Representatives,
Subcommittee on Aviation,
Committee on Public Works and Transportation,
Washington, D.C.

The subcommittee convened at 10:30 a.m., in room 2167, Rayburn House Office Building, Hon. Glenn M. Anderson (chairman of the subcommittee) presiding.

Mr. Anderson. The meeting of the Subcommittee on Aviation will come to order.

It has been pointed out by one of the members that we have television cameras set up here, and we were not properly asked, ahead of time. I am not going to rule against the television being here, but I am going to suggest that in the future, the television media contact the administrator for the committee, and he will contact the committee ahead of time and see if anybody has any objection. In the future, we would like to know a little ahead of time before the television cameras get set up.

In today's hearings, we are considering a number of bills and other proposals to enhance the safety mission of the Federal Aviation Administration.

Through the cooperative efforts of the FAA and the aviation industry, a fine aviation safety record has been achieved. Continuing and improving this record requires constant effort. We need to find weak spots and problem areas, so that they can be strengthened before they lead to a tragic accident. Additionally, as the technology of aviation grows more complex, we must be certain that the FAA has the technical capability to continue to be both an effective regulator and an effective operational agency.

The proposal before us today seeks to improve the FAA's safety effectiveness in two different ways. The General Accounting Office report and the report of the blue ribbon panel seek to improve the FAA's performance without changing its basic organizational structure. The suggested changes cover a broad range, including management techniques, such as better planning and control; improved recruitment of scientific and engineering personnel, and improvement in procedures and policies followed in the FAA's regulations of aircraft design, manufacture and production.

Other proposals seek to improve the FAA's functioning by changing the FAA's basic organizational structure. H.R. 351, introduced by Congressman Goldwater, would change the FAA from an administration within the Department of Transportation to an independent agency. H.R. 6771, introduced by Congressman Levitas, would

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take all nonsafety functions from the FAA and have these functions carried out by the Department of Transportation. H.R. 7850, introduced by Congressman Matsui, would separate the FAA's responsibility for safety regulations from the agency's operational responsibilities.

[The following bills were received for the record:]

96TH CONGRESS
1ST SESSION

H. R. 351

To establish an independent Federal Aviation Agency, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 15, 1979

Mr. GOLDWATER introduced the following bill; which was referred to the Committee on Public Works and Transportation

---

A BILL

To establish an independent Federal Aviation Agency, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Independent Federal Aviation Agency Act of 1977".

FINDINGS

SEC. 2. The Congress hereby finds and declares:

(1) A former independent agency of the United States known as the Federal Aviation Agency was established by the Federal Aviation Act of 1958 (49 U.S.C. 1301 et seq.) to provide for the regulation and promotion of civil aviation

in such manner as to best foster its development and safety, and to provide for the safe and efficient use of the airspace by both civil and military aircraft, and for other purposes.

(2) Under provisions of the Department of Transportation Act (49 U.S.C. 1651 et seq.), the Federal Aviation Agency was established as an integral component of the Department of Transportation and its name was changed to the Federal Aviation Administration. The functions, powers, and duties of the former Federal Aviation Agency, and of the Administrator and other officers and offices thereof, were transferred to and vested in the Secretary of Transportation.

(3) Since October 15, 1966, the date of enactment of the Department of Transportation Act (49 U.S.C. 1651 et seq.), the relationship between the Federal Aviation Administration and the Office of the Secretary of Transportation has been characterized by arbitrary and capricious control exercised by the Office of the Secretary of Transportation over the entire range of Federal Aviation Administration activities. Such excessive and unreasonable control, exceeding the intent of the Congress as expressed in the Department of Transportation Act and its legislative history, has had deleterious and debilitating effects on the conduct of the vital aviation safety mission intended to be performed by the Federal Aviation Administration. The resultant misplacement of authority and responsibility between the Office of the Secretary

of Transportation and the Federal Aviation Administration is manifest in all managerial and operational areas.

(4) It has become apparent that the proper conduct of the responsibilities associated with civil aviation development and safety—

(A) requires prompt, vigorous, and unencumbered action by an independent Federal aviation agency, notably to identify and remedy problem areas;

(B) demands that the head of such an agency be free to make determinations which, in the exercise of his best independent judgment, are necessary; and

(C) calls for the elimination of confusion as to the functional role of the Federal Aviation Administration arising from the existing institutional relationship which places the Federal Aviation Administration in a position subservient to that of another organization of Government.

No such agency can properly perform its assigned functions unless it is totally separate and independent from any department, agency, or instrumentality of the United States.

ESTABLISHMENT OF AGENCY

SEC. 3. (a) There is hereby established the Federal Aviation Agency (hereafter in this Act referred to as the "Agency") as an independent agency of the United States.

(b) The Agency shall be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, In appointing an Administrator, the President shall be guided by the qualifications for such office which are specified in section 301 (b) of the Federal Aviation Act of 1958 (49 U.S.C. 1341 (b)).

(c) There shall be a Deputy Administrator of the Agency who shall be appointed by the President, by and with the advice and consent of the Senate. In appointing a Deputy Administrator, the President shall be guided by the qualifications for such office which are specified in section 302 (b) of the Federal Aviation Act of 1958 (49 U.S.C. 1342 (b)).

(d) Any person who, on the effective date of this Act, held a position compensated in accordance with the Executive Schedule, and who, without a break in service, is appointed in the Agency to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position, for the duration of his service in his new position.

POWER OF ADMINISTRATOR AND DEPUTY ADMINISTRATOR

SEC. 4. (a) (1) The Administrator shall be responsible for the exercise of all powers and the discharge of all duties of the Agency, and he shall have full authority and control over all personnel and activities thereof.

(2) In carrying out his functions, powers, and duties under this Act, the Administrator shall be governed by all applicable statutes, including the policy standards set forth in the Federal Aviation Act of 1958 (49 U.S.C. 1301 et seq.).

(3) Decisions of the Administrator made pursuant to his exercise of the functions, powers, and duties enumerated in the Federal Aviation Act of 1958 (49 U.S.C. 1301 et seq.) shall be administratively final, and appeals as authorized by law shall be taken directly to the National Transportation Safety Board or to any court of competent jurisdiction, as appropriate.

(4) The Administrator shall not submit his decisions for the approval of, nor be bound by the decisions or recommendations of, any committee, board, or other organization created by Executive order.

(b) The Deputy Administrator shall perform such functions and duties and exercise such powers as the Administrator shall prescribe. The Deputy Administrator shall act for, and exercise the powers of, the Administrator during his absence or disability.

TRANSFERS TO AGENCY

SEC. 5. (a) There are hereby transferred to and vested in the Administrator all functions, powers, and duties of the Secretary of Transportation and other officers and offices of the Department of Transportation, including those functions, powers, and duties of the Secretary of Transportation which are exercised by the Administrator of the Federal Aviation Administration, under the following laws and provisions of law:

(1) The Act of September 7, 1957, as amended (71 Stat. 629).

(2) The Federal Aviation Act of 1958 (49 U.S.C. 1301 et seq.).

(3) Section 6 (c) of the Department of Transportation Act (49 U.S.C. 1655 (c)).

(4) The Airport and Airway Development Act of 1970 (49 U.S.C. 1701 et seq.).

(5) The Hazardous Materials Transportation Act (88 Stat. 2156 et seq.), to the extent that such Act pertains to the transportation of hazardous materials by air.

(b) The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, of the Department of Transportation (which are related to the area of civil aviation) are hereby transferred from the Secretary of Transportation and the Administrator of the Federal Aviation Administation (to the extent assigned by the Secretary to the Administrator of the Federal Aviation Administration) to the Administrator.

(c) In any case where all of the functions, powers, and duties of any office or agency are transferred pursuant to this Act, such office or agency shall lapse on the date such transfer is effective.

AMENDMENTS TO OTHER LAWS

SEC. 6. (a) The Department of Transportation Act (49 U.S.C. 1651 et seq.) is amended as follows:

(1) Section 3 of such Act (49 U.S.C. 1652) is amended—

(A) by amending paragraph (1) of subsection (e) to read as follows:

"(1) There is hereby established within the Department a Federal Highway Administration and a Federal Railroad Administration. Each of these components shall be headed by an Administrator. The Administrators shall be appointed by the President, by and with the advice and consent of the Senate.";

(B) by striking out paragraph (2) of subsection (e); and

(C) by renumbering paragraphs (3) and (4) of subsection (e) as paragraphs (2) and (3), respectively, and renumbering all references to such paragraphs accordingly.

(2) Section 4 of such Act (49 U.S.C. 1653) is amended—

(A) in subsection (a), by striking out "with particular attention to aircraft noise" and inserting in lieu thereof "with the exception of aircraft noise"; and

(B) in subsection (b)(1) by striking out "the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 et seq.);".

(3) Section 6 of such Act (49 U.S.C. 1655) is amended—

(A) by striking out subsection (c); and

(B) by relettering the subsections of such section as subsections (a) and (h), respectively, and relettering all references to such subsections accordingly.

(4) Section 9 of such Act (49 U.S.C. 1658) is amended—

(A) by striking out subsection (f); and

(B) by relettering the subsections of such section as subsections (a) through (p), respectively, and relettering all references to such subsections accordingly.

(b) Subchapter II (relating to executive schedule pay rates) of chapter 53 of title 5 of the United States Code is amended as follows:

(1) Section 5313 of such subchapter is amended by striking out "(19) Administrator, Federal Aviation Administration." and inserting in lieu thereof "(19) Administrator, Federal Aviation Agency.".

(2) Section 5315 of such subchapter is amended by striking out "(80) Deputy Administrator, Federal Aviation Administration" and inserting in lieu thereof "(80) Deputy Administrator, Federal Aviation Agency.".

(c) Section 304 of the Independent Safety Board Act of 1974 (88 Stat. 2168) is amended—

(1) by amending the second sentence of paragraph (1) of subsection (a) to read as follows: "The Board may request the Secretary of Transportation (hereafter in this title referred to as the 'Secretary'), or the Administrator of the Federal Aviation Agency in the case of aircraft accidents, to make investigations with regard to such accidents and to report to the Board the facts, conditions, and circumstances thereof (except in accidents where misfeasance or nonfeasance by the Federal Government is alleged), and the Secretary or his designees, or the Administrator of the Federal Aviation Agency or his designees in the case of aircraft accidents, are authorized to make such investigations."; and

(2) by striking out "Secretary of Transportation" in subsection (a)(9)(A) and inserting in lieu thereof "Administrator of the Federal Aviation Agency".

SAVING PROVISIONS

SEC. 7. (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective—

(A) under any provision of law amended by this Act, or

(B) in the exercise of functions, powers, or duties which are transferred under this Act,

by (i) any department or agency, any functions of which are transferred by this Act, or by (ii) any court of competent jurisdiction; and

(2) which are in effect at the time this Act takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Administrator, by any court of competent jurisdiction, or by operation of law.

(b) The provisions of this Act shall not affect any proceedings pending at the time this section takes effect before any department or agency (or component thereof), functions of which are transferred by this Act; but such proceedings, to the extent that they relate to functions so transferred, shall be continued before the Agency. Such proceedings, to the extent they do not relate to functions so transferred, shall be continued before the department or agency before which they were pending at the time of such transfer. In either case, orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or repealed by the Administrator, by any court of competent jurisdiction, or by operation of law.

(c) (1) Except as provided in paragraph (2)—

(A) the provisions of this Act shall not affect suits commenced prior to the date this section takes effect, and

(B) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this Act had not been enacted

No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any department or agency, functions of which are transferred by this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or such official of the Agency as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this subsection.

(2) If before the date on which this Act takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this Act—

(A) such department or agency is transferred to the Administrator, or

(B) any function of such department, agency, or officer is transferred to the Administrator,

then such suit shall be continued by the Administrator (except in the case of a suit not involving functions transferred to the Administrator, in which case the suit shall be continued by the department, agency, or officer which was a party to the suit prior to the effective date of this Act).

(d) With respect to any function, power, or duty transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to any department or agency, officer or office so transferred or functions of which are so transferred shall be deemed to mean the officer or agency in which this Act vests such function after such transfer.

EFFECTIVE DATE

SEC. 8. This Act shall take effect ninety days after its date of enactment.

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96TH CONGRESS
2D SESSION

H. R. 6771

To provide that the Federal Aviation Administration shall only perform functions relating to aviation safety, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 1980

Mr. LEVITAS introduced the following bill; which was referred to the Committee on Public Works and Transportation

---

A BILL

To provide that the Federal Aviation Administration shall only perform functions relating to aviation safety, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 301 of the Federal Aviation Act of 1958 (49 U.S.C. 1341) is amended by adding at the end thereof the following new subsection:

"DUTIES OF THE ADMINISTRATOR

"(d) The Administrator shall perform the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety, including, but not limited to, the functions, powers, and duties transferred to the Administrator by section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c); 80 Stat. 937). Notwithstanding any other provision of law, the Administrator shall not perform any functions, powers, and duties other than those pertaining to aviation safety.".

(b)(1) Any functions, powers, and duties performed by the Administrator of the Federal Aviation Administration before the effective date of this Act which do not pertain to aviation safety (as identified by the Secretary of Transportation under paragraph (2) of this subsection) shall be performed on and after such effective date by the Secretary of Transportation.

(2) Not later than one hundred and twenty days after the date of enactment of this Act, the Secretary of Transportation shall identify, and report to the Congress on, the functions, powers, and duties described in paragraph (1) of this subsection and the office within the Department of Transportation which will perform such functions, powers, and duties after the effective date of this Act.

(c) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 301. Creation of Agency."

is amended by adding at the end thereof the following:

"(d) Duties of the Administrator.".

Sec. 2. Section 9(e) of the Department of Transportation Act is amended by inserting at the end thereof the following new paragraph:

"(4) Notwithstanding any other provision of this subsection, no functions, powers, or duties of the Secretary or any officer or employee of the Department which do not pertain to aviation safety may be delegated to the Federal Aviation Administration, the Administrator of such Administration, or any officer or employee of such Administration.".

Sec. 3. The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available in connection with the functions, powers, and duties described in subsection (b) of the first section of this Act are hereby transferred to the Secretary of Transportation.

Sec. 4. (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective in the exercise of the functions, powers, and duties described in subsection (b) of the first section of this Act by the Federal Aviation

Administration or any court of competent jurisdiction, and

(2) which are in effect at the time this Act takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Secretary of Transportation, by any court of competent jurisdiction, or by operation of law.

(b) The provisions of this Act shall not affect any proceedings pending at the time this Act takes effect before the Federal Aviation Administration; but such proceedings, to the extent that they relate to functions, powers, and duties described in subsection (b) of the first section of this Act shall be continued before the Department of Transportation. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Secretary of Transportation, by a court of competent jurisdiction, or by operation of law.

(c) Except as provided in subsection (e)—

(1) the provisions of this Act shall not affect suits commenced prior to the date this Act takes effect, and

(2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) No suit, action, or other proceeding commenced by or against any officer of the Federal Aviation Administration in his official capacity shall abate by reason of the enactment of this Act. No cause of action by or against the Federal Aviation Administration or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act.

(e) If, before the date on which this Act takes effect, the Federal Aviation Administration or any officer thereof in his official capacity, is a party to a suit in connection with any function, power, or duty described in subsection (b) of the first section of this Act, then such suit shall be continued with the Secretary substituted.

SEC. 5. With respect to any functions, powers, and duties described in subsection (b) of the first section of this Act, reference in any other Federal law to the Administrator of the Federal Aviation Administration or to the Federal Aviation Administration shall be deemed to refer to the Secretary of Transportation or to the Department of Transportation, respectively.

SEC. 6. This Act (other than subsection (b)(2) of the first section of this Act) and the amendments made by this Act shall take effect one hundred and eighty days after the date of enactment of this Act.

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96th CONGRESS
2d Session

H. R. 7850

To improve the operation of the Federal Government's aviation safety activities, to establish a new Air Safety Administration, to improve the organization and operation of the national air traffic control system, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

July 28, 1980

Mr. Matsui introduced the following bill; which was referred to the Committee on Public Works and Transportation

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A BILL

To improve the operation of the Federal Government's aviation safety activities, to establish a new Air Safety Administration, to improve the organization and operation of the national air traffic control system, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Air Safety Reorganization Act of 1980".

DECLARATIONS AND FINDINGS

SEC. 2. (a) The Congress hereby declares that the general welfare and the public interest require effective action by the Federal Government to insure that the highest possible degree of safety in air transportation and air commerce is furthered and maintained.

(b) The Congress finds that the best means to achieve this objective and to improve Government operations is to establish a new Air Safety Administration, which shall, among other things, be responsible for the timely development, issuance, and enforcement of rules, regulations, standards, and procedures governing air safety; carrying out related air safety engineering, research, and development activities; the issuance of airman certificates; the issuance of certificates for the design, production, and operation of aircraft and aircraft components; the issuance of certificates for schools giving instruction in flying or maintaining, overhauling, and repairing aircraft; and the issuance of orders governing inspection, maintenance, overhaul, and repair of equipment used in air transportation.

(c) The Congress finds that it is in the public interest to separate these regulatory and certification activities from the performance of other functions, principally the operation of the Nation's air traffic control system and administration of the Airport and Airway Development Act of 1970, now carried out in the Department of Transportation by the Federal Aviation Administration.

TITLE I—AIR SAFETY ADMINISTRATION

ESTABLISHMENT OF ADMINISTRATION

SEC. 101. There is hereby established an independent regulatory agency to be known as the Air Safety Administration (hereinafter referred to in this title as the "Administration").

AIR SAFETY ADMINISTRATOR

SEC. 102. There shall be at the head of the Administration the Air Safety Administrator, who shall be appointed by the President by and with the advice and consent of the Senate. The Air Safety Administrator shall be a citizen of the United States and shall be appointed on the basis of his fitness and ability to carry out the responsibilities of his position. At the time of his nomination, he shall be a civilian and shall have had experience in a field directly related to aviation and aviation safety. The Air Safety Administrator shall have no pecuniary interest in, or own stock in or bonds of, any aeronautical enterprise, nor shall he engage in any other business, vocation, or employment.

DEPUTY AIR SAFETY ADMINISTRATOR

SEC. 103. There shall be in the Administration a Deputy Air Safety Administrator who shall be appointed by the President by and with the advice and consent of the

Senate. The Deputy Air Safety Administrator shall perform such duties and exercise such powers as the Air Safety Administrator shall prescribe. The Deputy Air Safety Administrator shall act for, and exercise the powers of, the Air Safety Administrator during his absence or disability. The Deputy Air Safety Administrator shall be a citizen of the United States and shall be appointed on the basis of his fitness and ability to carry out the responsibilities of his position. At the time of his nomination, he shall be a civilian and shall have had experience in a field directly related to aviation and aviation safety. He shall have no pecuniary interest in, nor own any stocks in or bonds of, any aeronautical enterprise, nor shall he engage in any other business, vocation, or employment.

TRANSFERS OF FUNCTIONS TO THE AIR SAFETY ADMINISTRATOR

SEC. 104. (a) There are hereby transferred to the Air Safety Administrator all functions, powers, and duties of the Secretary of Transportation and other officers and offices of the Department of Transportation (including those functions, powers, and duties of the Secretary of Transportation which are exercised by the Administrator of the Federal Aviation Administration) under the following laws and provisions of law:

(1) Sections 107, 314, 315, 316, 317, and 1111 and titles IV, V, and VI (other than section 612) of the Federal Aviation Act of 1958.

(2) Title IV of the Aviation Safety and Noise Abatement Act of 1979.

(b) Section 1601(b)(1) of the Federal Aviation Act of 1958 (49 U.S.C. 1551(b)(1)) is amended by striking out "Department of Transportation" each place it appears in subparagraphs (A) and (B) and inserting in lieu thereof "Air Safety Administrator".

(c) Decisions of the Air Safety Administrator made pursuant to the exercise of the functions, powers, and duties transferred to and vested in the Administrator by this section shall be administratively final and appeals as authorized by law shall be taken directly to the courts or to the National Transportation Safety Board, as appropriate.

FUNCTIONS EXERCISED BY THE AIR SAFETY ADMINISTRATOR AND ADMINISTRATOR OF AVIATION OPERATIONS ADMINISTRATION

SEC. 105. (a) Both the Air Safety Administrator and the Administrator of the Aviation Operations Administration shall exercise the functions, powers, and duties of the Secretary of Transportation and other offices and officers of the Department of Transportation (including those functions, powers, and duties of the Secretary of Transportation which are exercised by the Administrator of the Federal Aviation Administration) under titles VII, IX, and X of the Federal Aviation Act of 1958 in a manner which is consistent with the transfer and assignment of other aviation functions, powers, and duties by this Act.

(b) Both the Air Safety Administrator and the Administrator of the Aviation Operations Administration may exercise the authority granted under sections 302(k) and 303 (a), (b), (c), and (e) of the Federal Aviation Act of 1958 in carrying out their respective functions, powers, and duties.

(c) The Administrator of the Aviation Operations Administration shall carry out that part of his responsibilities under section 307(c) of the Federal Aviation Act of 1958 which relates to the prescribing of rules for the prevention of collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects, in consultation with the Air Safety Administrator.

(d) The Secretary of Transportation shall retain and continue to exercise all functions, powers, and duties pertaining to aviation safety which are vested in him and are not transferred or assigned to the Air Safety Administrator or the Administrator of the Aviation Operations Administration by this Act.

ADMINISTRATIVE PROCEDURES

SEC. 106. (a) The Air Safety Administrator is authorized to prescribe such policies, standards, criteria, procedures, rules, and regulations as he may deem to be necessary or appropriate to perform functions now or hereafter vested in him.

(b) The Air Safety Administrator shall engage in such policy planning, and perform such program evaluation analyses and other studies, as may be necessary to promote the efficient and coordinated administration of the Administration and properly assess progress toward the achievement of its missions.

(c) Except as otherwise expressly provided by law, the Air Safety Administrator may delegate any of his functions to such officers and employees of the Administration as he may designate, and may authorize such successive redelegations of such functions as he deems necessary or appropriate.

(d) Except as provided in section 103, the Air Safety Administrator may organize the Administration as he deems necessary or appropriate.

(e) The Air Safety Administrator is authorized to establish, maintain, alter, or discontinue such State, regional, district, local, or other field offices as he deems necessary or appropriate to perform functions now or hereafter vested in him.

(f) The Air Safety Administrator shall cause a seal of office to be made for the Administration of such device as he shall approve, and judicial notice shall be taken of such seal.

(g) The Air Safety Administrator is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interests of economy and efficiency. There shall be transferred to the fund the stocks of supplies, equipment, assets other than real property, liabilities, and unpaid obligations relating to the services which he determines will be performed through the fund. Appropriations to the fund, in such amounts as may be necessary to provide additional working capital, are authorized. The working capital fund shall recover, from the appropriations and funds for which services are performed, either in advance or by way of reimbursement, amounts which will approximate the costs incurred, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from the sale or exchange of its property, and receipts in payment for loss or damage to property owned by the fund.

(h) Each department, agency, and instrumentality of the executive branch of the Government is authorized to furnish to the Air Safety Administrator, upon his request, any information or other data which the Air Safety Administrator deems necessary to carry out his duties under this title. The Secretary of Defense, the Secretary of Transportation, the Administrator of the National Aeronautics and Space Administration, and the National Transportation Safety Board are each directed to establish by cooperative agreement suitable arrangements with the Air Safety Administrator for the timely exchange of information pertaining to their programs, policies, and requirements which directly relate to the Air Safety Administrator's responsibilities under this Act.

PERSONNEL AND SERVICES

SEC. 107. (a) The Air Safety Administrator is authorized, subject to the civil service and classification laws, to select, employ, appoint, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary to carry out the provisions of this Act and to define their authority and duties.

(b) The Air Safety Administrator is authorized to obtain services as provided by section 3109 of title 5 of the United States Code.

(c)(1) The Air Safety Administrator is authorized to provide for participation of military personnel in the performance of his functions. Members of the Army, the Navy, the Air Force, and the Marine Corps may be detailed for service in the Administration by the appropriate military Secretary, pursuant to cooperative agreements with such Secretary, for service in the Administration in positions other than a position the occupant of which must be approved by and with the advice and consent of the Senate.

(2) Appointment, detail, or assignment to, acceptance of, and service in, any appointive or other position in the Administration under this subsection shall in no way affect the status, office, rank, or grade which such members may occupy or hold, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade. A member so appointed, detailed, or assigned shall not be subject to direction or control by his Armed Force, or any officer thereof, directly or indirectly, with respect to the responsibilities exercised in the position to which appointed, detailed, or assigned.

(d) The Air Safety Administrator is authorized to pay transportation expenses and per diem in lieu of subsistence expenses in accordance with chapter 57 of title 5 of the United States Code for travel between places of recruitment and duty, and while at places of duty, of persons appointed for emergency, temporary, or seasonal services in the field service of the Administration.

(e) The Air Safety Administrator is authorized to utilize, on a reimbursable basis, the services of any personnel made available by any department, agency, or instrumentality, including any independent agency of the Federal Government.

(f) The Air Safety Administrator is authorized to establish advisory boards, in accordance with the provisions of the Federal Advisory Committee Act (Public Law 92-463), to advise with and make recommendations to the Air Safety Administrator on legislation, regulations, policies, administration, research, and other matters.

(g) The Air Safety Administrator is authorized to employ persons who are not citizens of the United States in expert, scientific, technical, or professional capacities whenever he deems it in the public interest.

REPORTS AND INFORMATION TO CONGRESS

SEC. 108. (a) The Air Safety Administrator shall, as soon as practicable after the end of each fiscal year, make a report to the Congress on the activities of the Administration during the preceding fiscal year. Such report shall include a clear statement of short- and long-range goals, priorities, and plans of the Administration together with an assessment of the progress toward those objectives.

(b) The Air Safety Administrator shall keep the appropriate congressional committees fully and currently informed with respect to all of the Administration's activities.

(c) Whenever the Air Safety Administrator submits or transmits any budget estimate, budget request, supplemental budget estimate, or other budget information, legislative recommendation, prepared testimony for congressional hearings, or comment on legislation to the President or to the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Air Safety Administrator to submit his budget requests or estimates, legislative recommendations, prepared testimony for congressional hearings, or comments on legislation to any officer or agency of the United States for approval, comments, or review prior to the submission of such recommendations, testimony, or comments to the Congress.

TRANSFER OF FUNDS

SEC. 109. The Air Safety Administrator, when authorized in an appropriation Act, may, in any fiscal year, transfer funds from one appropriation to another within the Administration; except, that no appropriation shall be either increased or decreased pursuant to this section by more than 5 per centum of the appropriation for such fiscal year.

REORGANIZATION

SEC. 110. For the purposes of chapter 9 of title 5, United States Code, the Air Safety Administration shall be deemed an independent regulatory agency.

TITLE II—AVIATION OPERATIONS ADMINISTRATION

ESTABLISHMENT

SEC. 201. (a) Section 3(e)(1) of the Department of Transportation Act (80 Stat. 932; 49 U.S.C. 1652(e)(1)) is amended—

(1) by striking out "Federal Aviation Administration" each place it appears and inserting in lieu thereof "Aviation Operations Administration"; and

(2) by striking out "Deputy Federal Aviation Administrator" and inserting in lieu thereof "Deputy Administrator of the Aviation Operations Administration".

(b) Section 3(e)(2) of the Department of Transportation Act (80 Stat. 932; 49 U.S.C. 1652(e)(2)) is amended to read as follows:

"(2) The qualifications of the Administrator of the Federal Aviation Administration, as specified in section 301(b) of the Federal Aviation Act of 1958 (72 Stat. 744; 49 U.S.C. 1341), and the qualifications and status of the Deputy Administrator specified in section 302(b) of the Federal Aviation Act of 1958 (72 Stat. 744; 49 U.S.C. 1342) shall apply respectively to the Administrator and Deputy Administrator of the Aviation Operations Administration. Nothing in this Act shall be construed to preclude the appointment of the present Administrator or Deputy Administrator of the Federal Aviation Administration, respectively, as Administrator or Deputy Administrator, respectively, of the Aviation Operations Administration.".

GENERAL TRANSFERS

SEC. 202. (a) Paragraph (1) of section 6(c) of the Department of Transportation Act (80 Stat. 938; 49 U.S.C. 1655(c)) is amended by striking out the semicolon following "civil supersonic aircraft" and all that follows through the end of such paragraph and inserting in lieu thereof a period.

(b) Section 6(c) of the Department of Transportation Act (80 Stat. 938; 49 U.S.C. 1655(c)) is amended by redesignating paragraph (2) (and all references thereto) as paragraph (3) and by adding after paragraph (1) the following new paragraph:

"(2) All functions, powers, and duties of the Secretary of Transportation and other officers and offices of the Department of Transportation (including those functions, powers, and duties of the Secretary of Transportation which are exercised by the Administrator of the Federal Aviation Administration) under the following laws and provisions of law shall be exercised by the Administrator of the Aviation Operations Administration:

"(A) The Act of September 7, 1957 (71 Stat. 629; 49 U.S.C. 1324 note).

"(B) The Federal Aviation Act of 1958 (72 Stat. 731; 49 U.S.C. 1301 et seq.), other than the provisions of such Act which are transferred to the Air Safety Administrator by section 104 of the Air Safety Reorganization Act of 1980 and subject to section 105 of the Air Safety Reorganization Act of 1980.

"(C) The Airport and Airway Development Act of 1970 (84 Stat. 219; 49 U.S.C. 1701 et seq.).

"(D) The Hazardous Materials Transportation Act (88 Stat. 2156; 49 U.S.C. 1801 et seq.), to the extent that such Act pertains to the transportation of hazardous materials by air.

"(E) Titles I, II, III, and V of the Aviation Safety and Noise Abatement Act of 1979 (94 Stat. 50; Public Law 96-193).

In exercising these enumerated functions, powers, and duties the Administrator of the Aviation Operations Administration shall be guided by the declaration of policy in section 103 of the Federal Aviation Act of 1958. Decisions of the Administrator of the Aviation Operations Administration made pursuant to the exercise of the functions, powers, and duties enumerated in this paragraph to be exercised by the Administrator shall be administratively final and appeals as authorized by law shall be taken directly to the courts or to the National Transportation Safety Board, as appropriate.".

TITLE III—TRANSITIONAL, SAVING, CONFORMING, AND MISCELLANEOUS PROVISIONS

TRANSITIONAL PROVISIONS

SEC. 301. (a) Except as otherwise provided in this Act, whenever all of the functions or programs of an agency or other body, or any component thereof, affected by this Act, have been transferred from that agency, or other body, or component thereof by this Act or have been required by this Act to be exercised by another entity or officer, the agency or other body or component thereof shall lapse. If an agency or other body, or any component thereof, lapses pursuant to the preceding sentence, each position and office therein which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rate prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313–5316) shall lapse.

(b) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by any department or agency, any functions of which are transferred by this Act, or by a court of competent jurisdiction, in the exercise of functions, powers, or duties which are transferred or assigned by this Act, and

(2) which are in effect at the time this Act takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the Secretary of Transportation, the Air Safety Administrator, the Administrator of the Aviation Operations Administration, or other authorized officials, by a court of competent jurisdiction, or by operation of law.

(c) The provisions of this Act shall not affect any proceedings pending at the time this section takes effect before any department or agency (or component thereof), functions of which are transferred or assigned by this Act; but such proceedings, to the extent they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Secretary, the Air Safety Administrator, the Administrator of the Aviation Operations Administration, a court of competent jurisdiction, or operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued if this Act had not been enacted.

(d) Except as provided in subsection (f)—

(1) the provisions of this Act shall not affect suits commenced prior to the date this Act takes effect, and

(2) in all such suits proceedings shall be had, appeals taken and judgments rendered, in the same manner and effect as if this Act had not been enacted.

(e) No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred or assigned by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any such department or agency, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act. Causes of action, suits, actions, or other proceedings may be asserted by or against the United States or such official as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter any order which will give effect to the provisions of this section.

(f) If, before the date on which this Act takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this Act any function of such department, agency, or officer is transferred or assigned to the Air Safety Administrator or the Administrator of the Aviation Operations Administration, or any other official, then such suit shall be continued as if this Act had not been enacted, with the Air Safety Administrator or the Administrator of the Aviation Operations Administration, or other official, as the case may be, substituted.

(g) Final orders and actions of any department or agency (or component thereof) or any officer in the performance of functions transferred or assigned by this Act shall be subject to judicial review to the same extent and in the same manner as if such orders or actions had been made or taken by the department, agency, component, or officer in the performance of such functions immediately preceding the effective date of this Act. Any statutory requirements relating to notices, hearings, action upon the record, or administrative review that apply to any such function shall apply to the performance of such function by the Air Safety Administrator or the Administrator of the Aviation Operations Administration, or any officer or component thereof.

(h) Reference in any other law to any department or agency, or any officer or office, the functions of which are transferred or assigned by this Act, shall, with respect to any such function performed after the effective date of this Act, be deemed to refer to the Air Safety Administrator, the Air Safety Administration, the Administrator of the Aviation Operations Administration, the Aviation Operations Administration, or other office or officer in which this Act vests such function.

(i) Nothing contained in this Act shall be construed to limit, curtail, abolish, or terminate any function of the President which he had immediately before the effective date of this Act; or to limit, curtail, abolish, or terminate his authority to perform such function; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions.

(j) Except as may be otherwise expressly provided in this Act, all functions expressly conferred by this Act shall be in addition to and not in substitution for functions existing immediately before the effective date of this Act and transferred or assigned by this Act.

TRANSFER OF PERSONNEL AND OTHER MATTERS

SEC. 302. (a) Except as provided in the next sentence, the personnel employed in connection with, and the personnel positions, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions and programs transferred or assigned by this Act, are, subject to section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), correspondingly transferred for appropriate allocation. Personnel positions expressly created by law, personnel occupying those positions on the effective date of this Act, and personnel authorized to receive compensation at the rate prescribed for offices and positions at levels II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313–5316) on the effective date of this Act shall be subject to the provisions of subsection (c) of this section and section 301 of this Act.

(b) Except as provided in subsection (c) of this section, transfer of nontemporary personnel pursuant to this Act shall not cause any such employee to be separated or reduced in grade or compensation for one year after such transfer.

(c) Any person who, on the effective date of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Air Safety Administration or the Aviation Operations Administration to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position.

INCIDENTAL DISPOSITIONS

SEC. 303. The Director of the Office of Management and Budget is authorized to make such additional incidental dispositions of personnel, personnel positions, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with functions transferred or assigned by this Act, as he may deem necessary or appropriate to accomplish the intent and purpose of this Act.

DEFINITIONS

SEC. 304. Unless otherwise defined or unless the content otherwise requires, definitions set forth in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301) shall apply to terms used in this Act.

CONFORMING AMENDMENTS

SEC. 305. (a)(1) Section 5313 of title 5, United States Code, is amended by striking out

"Administrator, Federal Aviation Administration."

and inserting in lieu thereof

"Administrator, Aviation Operations Administration.".

(2) Section 5313 of title 5, United States Code, is amended by adding at the end thereof the following:

"Air Safety Administrator.".

(3) Section 5315 of title 5, United States Code, is amended by striking out

"Deputy Administrator, Federal Aviation Administration."

and inserting in lieu thereof

"Deputy Administrator, Aviation Operations Administration.".

(4) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following:

"Deputy Air Safety Administrator.".

(5) The number of executive level positions published under section 5311(b) of title 5, United States Code, shall be increased by two.

(b) Section 4(a) of the Department of Transportation Act is amended by striking out "with particular attention to aircraft noise" and inserting in lieu thereof "with the exception of aircraft noise".

(c) The Independent Safety Board Act of 1974 (88 Stat. 2166; 49 U.S.C. 1901 et seq.) is amended—

(1) in section 304(a)(1), by inserting "and, in the case of aircraft accidents the Air Safety Administrator," after "the 'Secretary')" and by striking out "Secretary or his designees" and inserting in lieu thereof "Secretary or the Air Safety Administrator or their respective designees";

(2) in section 304(a)(9), by striking out "Secretary of Transportation" and inserting in lieu thereof "Air Safety Administrator";

(3) in section 307, by striking out "Secretary" whenever it appears and inserting in lieu thereof "Secretary or the Air Safety Administrator" and by striking out "he" and inserting in lieu thereof "the Secretary or the Administrator, as the case may be,".

SEPARABILITY

SEC. 306. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

CODIFICATION

SEC. 307. Not later than one year after the effective date of this Act, the Administrator of the Aviation Operations Administration and the Air Safety Administrator shall jointly submit to the Congress a proposed codification of all laws that contain the functions, powers, and duties transferred to or vested in both of them or their respective Administrations by this Act.

EFFECTIVE DATE AND INITIAL APPOINTMENTS

SEC. 308. (a) This Act shall take effect ninety days after the date of its enactment, or on such earlier date as the

President may prescribe and publish in the Federal Register; except that any of the officers provided for in this Act may be nominated and appointed, as provided by this Act, at any time after the date of enactment of this Act. Funds available to any department or agency (or any official or component thereof), any functions of which are transferred or assigned to the Air Safety Administrator, the Air Safety Administration, the Administrator of the Aviation Operations Administration, or the Aviation Operations Administration by this Act may, with the approval of the President, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available.

(b) In the event that an officer required by this Act to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this Act, the President may designate any officer, whose appointment was required to be made by and with the advice and consent of the Senate and who was such an officer immediately prior to the effective date of this Act, to act in such office until the office is filled as provided in this Act. While so acting, such persons shall receive compensation at the rates provided by this Act for the respective offices in which they sit.

COMPREHENSIVE SAFETY PLAN

SEC. 309. The Administrator of the Aviation Operations Administration shall, not later than one year after the effective date of this Act, develop and report to the Congress on a comprehensive, long-term plan to improve the safety of aviation operations, with particular attention to the air traffic control system and collision avoidance.

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Mr. ANDERSON. We look forward to receiving the comments of witnesses on these proposals. We encourage the witnesses to advance other proposals for achieving our common objective of improving aviation safety.

Witnesses are reminded that under the committee rules, oral statements must be limited to 10 minutes. Longer written statements will be received in full for the record.

Mr. Snyder, do you have any opening remarks?

Mr. SNYDER. Thank you, Mr. Chairman.

Mr. Chairman, I have a statement. I ask unanimous consent that it be put in the record in its entirety.

Mr. ANDERSON. No objection; so ordered.

[Statement referred to follows:]

STATEMENT OF HON. GENE SNYDER

Mr. Chairman, as you have indicated, these hearings will focus on various legislative proposals to reorganize the Federal Aviation Administration. In addition, we will also be looking at the recent national research council report on transport category aircraft certification and the GAO report on improving FAA's ability to deal with safety hazards. Hopefully, this inquiry will enable us to determine whether organizational changes in the FAA are necessary to insure that our air transportation system functions with the highest degree of safety.

Certainly the FAA has been going through some tough times lately. In the last two years alone, we have observed (1) the San Diego mid-air collision and the agency's ill-conceived controlled visual flight proposals, (2) the DC-10 in Chicago and the resulting realization that FAA is not being as aggressive as it should in its certification and maintenance oversight responsibilities, (3) computer outages and the continued threat of mid-air collisions, (4) an out-moded flight service station system, and (5) the lack of basic safety equipment at many of our nation's airports.

As a result of these occurrences, many have suggested that the FAA should not be in the business of promoting aviation but should concentrate on safety only. Others suggest that we return to the days when FAA was an aggressive, independent agency that did not have to get DOT's approval for every important decision. Still others believe that the FAA's shortcomings can be primarily traced to a staff which is stagnating and is not capable of adapting to the changing climate in the industry today.

While I have not yet decided whether enactment of any of the introduced bills would be desirable, I am generally a bit skeptical when it is suggested that a reorganization will improve an agency's performance. In many instances, reorganizations result only in the on-paper transfer of authority from one agency to another. Unfortunately, the personnel in the bureaucracy remain the same as does the overall performance of the agency. As a matter of fact, certain reorganizations could even have an adverse effect on a particular function since the personnel involved would have to make the adjustment of reporting to a different organizational element. In any event, we have three very different legislative proposals before us today and I look forward to hearing the witnesses' recommendations as to the pros and cons associated with each.

On the subject of the so-called blue ribbon report on aircraft certification and maintenance, I want to commend the national research council on a thorough and insightful look into these particular agency functions. I suspect that many of the agency's elements could also benefit from such a review of their operations. This report, in my opinion, was not only well-researched from the standpoint of backing up its recommendations but also because of the recommendations which it did not make. For example, much attention was focused on the DER or Designated Engineering Representative, after the DC-10 accident. The DER, an employee of the manufacturer, also acts as FAA's agent in assessing aircraft design integrity. After the accident we heard that the DER system should be abolished in favor of an FAA employed work force which would determine whether the particular design complies with appropriate standards. While this sounds great in theory—since it would eliminate apparent conflicts of interest for the DER—the blue ribbon report points out that Boeing will employ about 4,000 engineers at the peak of its design effort on the 767. On the other hand, FAA traditionally uses 20–30 professional engineers to oversee the certification process.

Obviously the sheer magnitude of the effort involved in manufacturing a transport category aircraft requires that a DER system be maintained. While it would be wonderful if FAA could constantly be looking over the shoulder of a manufacturer, it just isn't possible. Government can perform only a limited role, and in the case of certification, the DER system enables the government to do much more than would be possible with the present number of employees. I agree with the report's conclusion that DER's be retained while at the same time concurring with other recommendations which are designed to make FAA more aggressive in this area.

Mr. Chairman, I look forward to these hearings so we can evaluate some of these proposals to improve the way in which FAA performs its statutory responsibilities. Whether such changes are legislative or administrative in nature, it is apparent that something must be done to assure that this country retains its place as the world leader in aviation.

Mr. SNYDER. I would just comment briefly on the hearings. The FAA certainly has been going through some rough times lately. In the past 2 years, we have observed the San Diego midair collision and the agency's ill-conceived, controlled visual flight proposals; we have seen the DC-10 in Chicago and the resulting realization that the FAA is not being as aggressive as perhaps it should be in its certification, maintenance and oversight responsibility; we have seen the computer outages and the continued threat of midair collisions, one of which was reported in, I think, last night's newspaper here in Washington, and we have observed and heard complaints about outmoded flight service station systems and the lack of basic safety equipment in many of our Nation's airports. And as a result of these occurrences, of course, Mr. Chairman, as you have suggested, at least three proposals are before the committee.

I do not really know what we accomplish by the hearings at this point in time, considering the legislative calendar. If 100 percent of the witnesses come down, some of these proposals need to be enacted, there is not sufficient legislative time to do that through both the House and the Senate, considering our calendar, in this Congress. So I suspect we are wasting our time. But on the other hand, these issues that have been raised, or the tough times that FAA has been going through, I think, do justify and merit some action or some oversight or some consideration of the problems that they have down there.

Thank you.

Mr. ANDERSON. Thank you, Mr. Snyder.

Are there further comments?

Mr. Levitas?

Mr. LEVITAS. Thank you, Mr. Chairman.

I want to express my appreciation and commendation to you for scheduling the hearings on these three bills. They are important pieces of legislation, and while I share the view of Mr. Snyder that there is no likelihood that they can be enacted during the present Congress, I think by having these bills considered today in the full hearings that are scheduled, we will set the groundwork for early action in the next Congress, and I trust that as many members of this committee who desire to be back will be in attendance at those hearings and we could move to markup rather expeditiously.

Let me also say that even though I am the sponsor of one of the bills that is being considered today, it is my view and position that these bills or any combination of them, even if enacted, will not solve the problems at FAA. But I think they will provide the basis for consideration of some of the cures that should be put in place, including a version of the type of legislation being considered, that can begin to make the type of changes at FAA necessary to protect the safety of the traveling public.

Let me join with you in the usual statements that we make at the outset of any hearings on aviation safety. It has almost become a ritual. Our aviation industry is the safest aviation industry in the world. Commercial flying is one of the safest, if not the safest, mode of transportation. We have a safe aviation industry.

But what troubles me is that we are always talking in relative terms, and when we are discussing human lives, it seems to me we ought not to be saying, are we doing a good job, but are we doing the best job possible? And my answer to that question is FAA is not doing the best job possible. I have lost my patience, quite frankly, with the work at FAA. Over the last 6 years, we have had hearing after hearing on matters of aviation safety, and we get a lot of bureaucratic answers to some very important questions.

I think the time has now come for us to do something in Congress to make certain that the safety of the aviation industry be given the top priority and that we no longer simply say, "Is it safe?" but ask the question, "Is it as safe as it can be?"

FAA has got to stop simply being reactive to aviation safety problems and must anticipate, must plan for problems and to avoid consequences. Delays in regulatory activity are unconscionable; the stalling, the delays, the relationship between the industry and FAA are all creating problems. The GAO report which was issued in February of this year pointed out that FAA has a lack of appropriate management techniques in that agency to deal with, anticipate, plan for and implement appropriate safety requirements in the aviation industry. And the response that FAA and DOT gave to that GAO report ranged from ignoring it to deprecating it, and we got another round of bureaucratic answers.

I am going to try not to personalize the hearings as we go forward, because I think the problem is institutional in nature. But let us just take the issue that we have had hearings over at least the last 6 years on matters of postcrash fires, cabin safety, flammability of materials, inerting of fuel; and what has happened over the last 12 years—nothing. Two years ago, instead of going forward with regulations, a committee was created, and so far, it has toiled hard and come up, it seems to me, with a mouse rather than with an answer.

And I ask the question, after reading the newspaper this morning and listening to the news of the tragic crash in Saudi Arabia, in which the deaths of many people occurred, not in a crash but in a fire, where they were burned, because they could not get out of the airplane—an accident that they said could not happen—and I ask the question, how many more incendiaries are we going to have like that, how many more charred bodies will there be in fuselages of airplanes until FAA begins to get this problem dealt with and not simply talked about?

I commend you again, Mr. Chairman, for these hearings. I think they are important, and I think they need to be vigorously pursued.

Mr. ANDERSON. Are there further comments?

If there are no further comments from the members, we are very fortunate to have one of our colleagues from California, the Honorable Robert T. Matsui, as our first witness.

Mr. Matsui, the full text of your prepared statement will appear in the record at this point.

[The statement referred to follows:]

STATEMENT OF REPRESENTATIVE ROBERT T. MATSUI

Mr. Chairman and members of the subcommittee, thank you for the opportunity to speak on behalf of my bill, the Air Safety Reorganization Act of 1980. I applaud the Subcommittee's effort to investigate what I believe to be the root of many of our air safety problems: The structure of the Federal Aviation Administration.

Just over a year ago, 273 people were killed when a fully loaded DC-10 crashed on takeoff at O'Hare Airport in Chicago. As we all will so painfully recall, this was the worst air disaster in U.S. History, occurring only eight months after the tragic midair collision over San Diego which took the lives of 144 people.

In light of these major accidents and the hundreds of more minor ones which happen each year, it is not surprising that the public and Congress have been demanding improved air safety, and have been asking whether the FAA is doing all it should to improve conditions in this area.

Last year, at the request of my colleagues Bizz Johnson and Elliott Levitas, the General Accounting Office undertook a year-long investigation of how the FAA responds to safety needs. The conclusions of that study, released earlier this year, are disturbing. The GAO found that the FAA has been neither timely nor effective in developing systems to identify safety hazards. Also, because the FAA has no overall planning process, its actions in dealing with individual safety problems are reactive rather than anticipatory. Additionally, the GAO found that the agency has not adequately marshalled its forces to deal with safety problems quickly and effectively.

Further criticism has come from the blue-ribbon panel of aviation experts assembled at the request of Transportation Secretary Neil Goldschmidt to investigate the FAA's role in the aircraft certification process. The blue-ribbon committee's report, "Improving Air Safety," pointed to an alarming decline in FAA technical expertise in the certification area.

Adding to the movement for improved air safety, the Subcommittee on Government Activities and Transportation—on which I serve—recently concluded an 18-month investigation into the shortcomings of the FAA's certification of aircraft design, production, and maintenance. The Subcommittee investigation pointed out that the presence of a conflicting mandate to both foster aviation commerce and at the same time promote air safety inhibits the FAA's ability to carry out its safety obligations. In order to correct this problem, the Subcommittee recommended that Congress repeal this conflicting mandate, and ensure that the agency authorized to pursue air safety has a specific policy directive to assiduously do so. This is precisely what my bill would do.

Study after study has indicated that the FAA has failed in its air safety obligations. A key question is whether these reports, like their predecessors, will gather dust on the library shelf or whehter they will be translated into positive action. Congress, after all, set up the FAA in its current form. Congress bears the responsibility to ensure that the job we intended is carried out.

The duties we have entrusted to the FAA are many and important: Operating the nation's air traffic control system; managing the airport trust fund; promoting the aviation industry; certifying that planes are airworthy; certifying the abilities of airmen; setting standards for safety, and many others.

I am convinced that air safety would be improved if we could split these functions and create a separate agency which would be responsible for certification, the issuance of safety standards and regulations, as well as the cirtical research and development work which advances the state of the art in aviation safety. In my bill, these functions are transferred to a new independent agency, the Air Safety Administration, which would be an arm of Congress and report directly to us.

The FAA's poor air safety record makes it apparent that the important research and regulatory activities are a low priority within the FAA, further hindered by the fact that FAA is but a component of the Department of Transportation. If we separate these functions from the FAA and DOT and give them new life in an agency mandated to assign them a high priority, this vital work will be able to proceed in an expeditious and less cumbersome manner.

Under my bill, a number of functions pertaining to running the air traffic control system would remain within DOT under a new Aviation Operations Administration. It is my intention that this organization be charged with the day-to-day responsibilities of the nation's air traffic control system and administering the Airport Trust Fund. This structure would solve the problem of a conflicting mandate, since the promotion of aviation commerce would fall under the authority of the Aviation Operations Administration. Safety functions, on the other hand, would clearly fall under the jurisdiction of the Air Safety Administration.

Such a split would vastly improve the operation of our nation's air safety activities and, I might add, is not without precedent. Congress saw fit to break up the old Atomic Energy Commission several years ago when it decided that nuclear safety and the promotion of nuclear power shouldn't be handled by the same agency. The gravity of the current situation and the safety of the traveling public call for a similar restructuring of the FAA.

Mr. Chairman, I want to emphasize that I am not offering this measure as a "sure cure" for all of the FAA's shortcomings. My able colleagues, Congressmen Goldwater and Levitas, take somewhat different approaches to this problem. However, the important point that each of us is making is that Congress should move from investigating air safety to legislating in this area. The evidence is in, and the evidence is clear: Some definite problems exist with the way our nation deals with air safety. I am confident that as a result of these hearings, Congress will move forward to enact a workable, effective means of improving air safety regulation.

Mr. ANDERSON. Please proceed.

TESTIMONY OF HON. ROBERT T. MATSUI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MATSUI. Thank you very much, Chairman Anderson and members of the subcommittee, I appreciate very much your inviting me here to testify this morning on this very important issue.

I would like to commend Chairman Anderson and the members of this subcommittee, particularly the ranking minority member, Congressman Snyder, for conducting hearings on this very vital and important issue. Air safety and the deregulation of the airlines has been one of the major issues facing this country in the last couple of years and certainly in the remainder of this decade, it will be of paramount importance, as Mr. Snyder, Mr. Levitas, and Mr. Anderson so aptly stated in their opening comments.

Since you have entered my prepared statement into the record, I will make my oral remarks very brief, if I may, Mr. Chairman.

As all of you know, as was mentioned in the opening remarks of some of the members of this subcommittee, with the tragic San Diego PSA Airline crash where 144 persons died, and with the 273 individuals that died in the Chicago O'Hare crash on the DC-10, the Subcommittees of Government Operations, Mr. Mineta's Subcommittee of Public Works, and others, held numerous hearings on the issue of airline safety. And these hearings pointed out the very tragic and understandable need for all of us tc attempt to come up with alternatives to the current system we have.

Congressman Bizz Johnson and Congressman Elliott Levitas asked for a GAO report recently. That report was issued some months ago, and it indicated that the FAA's safety record was in need of a great deal of work. The National Academy of Science's Blue Ribbon Committee, as set forth by Secretary of Transportation, Neil Goldschmidt, indicated a critical comment on the FAA's safety role, and in particular, they honed in on the FAA's lack of technical expertise in the certification process.

The Government Activities and Transportation Subcommittee of John Burton conducted extensive hearings on the DC-10 issue and indicated that the safety functions of the FAA and the day-to-day operations of the FAA should be separated.

This is basically what my bill does. It would set up an Air Safety Administration which would be charged with the responsibilities of certifying all airlines, making sure the maintenance procedure is properly certified, and making sure that the research and development functions of the current FAA are within its umbrella.

The other aspect would still be under the Department of Transportation, and that would be the Aviation Operations Administration. This would be charged with the day-to-day functioning of the FAA, including control of the towers and these kinds of matters, including the airport trust fund.

Mr. Levitas' comment is aptly stated. All of these bills, if they were all instituted, would not go a long way in making sure that we have air safety. It would only be a small step in that direction.

But in view of the GAO report, the DOT report, the Government Activities and Transportation report, in view of our general knowledge of this particular problem, I think it would be tragic unless legislation is introduced and enacted in the next 12 to 18 months. It is my hope that these reports and these comments made by various people will not just go on the shelves to carry dust. I hope that we are going to be able to get some legislation through either in this Congress or in the next Congress.

Mr. Levitas and Mr. Goldwater, as you know by reading their bills, do take a somewhat different approach from my proposed legislation. I think their approaches are excellent, and it is my hope that some compromises could be worked out between the three different approaches to come up with a good bill that we can all live with.

I would like to thank you very much for the opportunity to testify this morning.

Mr. **Anderson**. Thank you, Mr. Matsui.

In your statement, you indicate that under your bill, the FAA's safety functions would be placed under the jurisdiction of a new Air Safety Administration, while the FAA's other responsibilities would remain in the Department of Transportation.

It seems to me that some of the functions that your bill would leave in DOT involve safety. For example, your bill leaves the entire airport and airways program in DOT, including the facilities and equipment program. Under this program, the FAA makes decisions on the installation of navigation aids and air traffic control equipment. Aren't the F and E decisions critical to safety, and shouldn't the F and E remain with your new safety agency?

Mr. **Matsui**. Mr. Chairman, your question is an excellent one, and I do agree with you that that is somewhat of a flaw in my legislation.

We left it under the umbrella of the Department of Transportation because it would pertain to the day-to-day operations of the particular function itself, and for that reason, we did leave it within the Department of Transportation. But frankly, it is my feeling that if the chairman and the members of the subcommittee would like to move that function to the Air Safety Administration, I certainly would not object to that. I put it in that way because I thought that would be a much more palatable proposal in view of the fact that my proposal was somewhat far reaching anyway.

Mr. **Anderson**. What about the operation of the air traffic control system, which your bill would also leave in the Department of Transportation? Don't decisions on such matters as the procedures followed by controllers and the rules for use of air space have important safety implications? Isn't operation of the air traffic control system a safety function which should remain with your new Safety Administration?

Mr. **Matsui**. Mr. Chairman, my prior comments would also apply to that particular area, also. I feel that if the subcommittee and the chairman of the subcommittee feel that that function should be within the Air Safety Administration, I certainly would support that effort. I introduced it the way I did because I did not want to overreach in my efforts to make some structural changes in the FAA.

I think your general thrust is absolutely correct, however.

Mr. **Anderson**.You indicate that the FAA has failed in its air safety obligations. How do you reconcile this conclusion with statistics showing a substantial improvement in air safety in the last 20 years?

For example, an attachment to the FAA's testimony shows that accidents per 100,000 hours of operation declined from 4 percent in 1957 to 2.2 percent in 1978.

Mr. **Matsui**. Well, Mr. Chairman, it would be my hope that any Federal agency that we have today would improve over the past 20 years. In my opinion, it is not a question of whether there was an improvement; it is a question of whether or not that improvement is sufficient to protect the consumers and the passengers of the general aviation and commercial aviation industry today. And I think the FAA can and should do better. When we have 273 deaths in one accident and 144 in another, when we have a crisis over whether a DC-10 should remain up in the air or not, and when we have vacillation and indecision by the FAA in those instances, I think we can do better.

So, although there has been an improvement, I do not think it is enough.

Mr. **Anderson**. Your proposal would create a new, independent safety agency which would not be associated with a Cabinet level department. Some people favor the current arrangement, in which the FAA is under DOT, because it is believed that aviation benefits from the ability to have its point of view advanced by a Cabinet Secretary. I would appreciate your comments on this question.

Mr. **Matsui**. Well, Mr. Chairman, that is a question, of course, for us to decide. I feel that with the Air Safety Administration under the umbrella and the control of the Congress, we would have a better situation for oversight to make sure that the mandate that we direct in our legislation will be carried out, rather than through the administration and through a Cabinet level officer. So I feel that it would be better under my proposal because it would give us the opportunity to control not only the budget but the actual operations.

So I would support and continue to support my proposal to put it under the Congress rather than the Cabinet or department heads.

Mr. **Anderson**. In your prepared statement you indicate that the Subcommittee on Government Activities and Transportation found a problem in the FAA's dual mandate to foster aviation commerce and to promote air safety. The subcommittee concluded that these dual objectives inhibit the FAA's ability to carry out its safety obligations.

Is the main problem that the FAA gives too much weight to the cost to the industry of safety measures, and did the subcommittee find any specific incidents where the FAA incorrectly refused to require a safety improvement because it would have been too expensive?

Mr. **Matsui**. Mr. Chairman, during the course of our hearings on the DC-10 crash and the aftermath of that crash, which occurred in May 1979, we discovered that the FAA was indeed under the dual mandate of promoting aviation and at the same time, promoting airline safety. And for that reason, in essence, it is my opinion—and this is just my opinion, but I think it is shared by various members of the subcommittee that heard testimony—that perhaps the FAA was somewhat neglect in its certification process on the DC-10 and also in its maintenance mandates on the DC-10. And when the DC-10 was finally grounded by the Administrator of the FAA, we found the same kinds of pressures that existed. American Airlines wanted those airplanes up in the air, and they were pressuring the Administrator of the FAA. Others, who felt that safety was more important, felt that perhaps we should take a better look, a more deliberative look at it.

As it turned out, Mr. Bond did indeed lift the embargo and allowed the airplane to go back up in the air again. I thought it was premature at the time, because some questions were not fully answered.

So I think that demonstrates, when you want a specific instance, the kind of conflict of interest that the FAA has. Also, I might just point out that the current controversy over the DC-9 stretched airplane is another instance of that basic conflict. Obviously, the airlines would like to see the stretched DC-9 up in the air as soon as possible. However, some people have said that perhaps we should have, instead of two pilots, three pilots on that plane. And they want extensive hearings on this subject, but the airlines would not want extensive hearings, because they want that plane up in the air very quickly. So again you have another specific instance of a conflict.

Mr. **Anderson**. In its testimony, the FAA points out that prior to 1958, aviation safety regulations were promulgated by one agency, the CAB, while the FAA's predecessor agency had the responsibility for the operational side of aviation safety. In 1958, the Congress decided to consolidate the regulatory and operational sides of safety into one agency.

Do you think that the 1958 decision, then, to consolidate regulation and operation is relevant to today's problems?

Mr. **Matsui**. Well, of course, that was in 1958, and at that time, aviation in this country was not at the state it is today. So the decision made by the Congress at that time was perhaps proper and correct. But as you know, in the past 7 or 8 years, we have seen a tremendous increase of passengers in the airlines and tremendous innovations in this particular area. And for that reason, I think at this time, it would be now proper for us, as you are doing now, to reexamine the situation and in fact, split those two functions again.

Mr. **Anderson**. Mr. Snyder?

Mr. **Snyder**. Thank you, Mr. Chairman.

In response to one of the chairman's questions toward the end, you talked about the considerable pressure which was on the FAA to put the DC-10 back in the air.

I fail to recognize how any reorganization is going to eliminate the pressure factor. It is just a question of who the pressure is going to be on, isn't it? I mean, the pressure is still going to be there. It is just a question of whether it is going to be on the FAA as it now exists, or on this new organization, whether it is under Mr. Levitas' bill, or yours, or Mr. Goldwater's. I failed to catch that as a bona fide argument.

Mr. **Matsui**. Thank you. I suppose to some extent, it depends upon the particular individual who happens to be placed there, but it would be my hope that the individual, whomever he or she may be, would carry out the mandate of the congressional legislation. And if, under the Air Safety Administration, the mandate is to promote aviation safety and not be so concerned with the day-to-day operations of the airlines, it would be my hope that that person would, in fact, carry out that mandate.

I do agree with you that the pressure, in fact, will still exist. But I have seen some of the activities of the National Transportation Safety Board, for example, which is promoting safety and investigating accidents. They, although pressured at the same time, do not seem to have the same kind of influence placed on them as some others.

Mr. **Snyder**. That is because they do not have any authority. You do not pressure the guy who does not have any authority, you know. I mean, that does not accomplish anything.

They are an investigative agency and independent to make their findings. But when it comes to the authority to perform, they do not have any authority to perform. It is with the FAA that we are dealing with today. I know these pressures exist. These pressures exist on you and me in our respective jobs. But they are going to exist on whoever happens to have the congressional seat from your place or my place, you see.

Mr. **Matsui**. Yes. It would be my hope that the person placed in charge of that would in fact carry out the mandate of our legislation.

Mr. **Snyder**. I hope you are not suggesting that Mr. Bond is more susceptible to pressure than others. I know he has been subject to a lot of criticism in recent days, I think, because of unfortunate events that have occured and that we have talked about this morning. But I have been down here since our committee has had jurisdiction over aviation, and it is a little difficult for me to say this because two of his predecessors have been in my party, but quite frankly, I think he is better than the other ones we have had since I have been here. And I hope that with the change in administration at the first of the year that we can pick one who is just as competent. Quite frankly, I hope we can get one better, of course.

But we did not do any better with the ones we had before him. I mean, Butterfield and McLucas were sorry. But enough of that.

You mention specifically in your criticism of the FAA the San Diego midair and the Chicago DC-10—incidentally, we are not supposed to mention the DC-10 by name, because that is made in the chairman's district—but you mention these in your criticism of their safety record, and I guess it is justification for making some movement consistent with what your bill would want to do.

Is it your contention that these accidents resulted from factors that would no longer exist if FAA were restructured?

Mr. **Matsui**. No, I would not say that at all. In fact, as far as the PSA crash in San Diego is concerned, I think the chairman's questions to me, the first couple questions he asked, would be within that particular area. The issue appeared to have been whether they should have a TCA and these kinds of things, rather than any area of certification or maintenance.

The Chicago situation was an issue of maintenance and certification, so I think there could have been an impact on that with respect to my legislation. But the PSA crash, I only mentioned that by way of illustration of the need for us to move in the general direction of air safety.

Mr. **Snyder**. He catches on fast, Mr. Chairman. You notice he refers to it as "the Chicago incident" now.

The FAA criticizes your bill, because they think it will take us back to the days when responsibility for aviation safety was fragmented, which I think is the situation that Congress recognized in creating the FAA, as the chairman referred to in his questions, in 1958.

Are you concerned about that criticism? Do you think it is possible that your legislation could have the opposite effect from what you intend?

Mr. **Matsui**. I would hope that my legislation would not have the opposite effect for which it was intended. I believe that the hearing process that I attended in the Government Operations Subcommittee will bear out that particular conclusion.

However, I feel very strongly that the bill that Mr. Levitas has introduced, the bill that Mr. Goldwater has introduced, and perhaps others that other Members of Congress will introduce will also be put together along with my proposal and perhaps a workable solution could be adopted out of it.

Again, I would not say that my bill is a cure-all for this situation.

Mr. **Snyder**. Well, let me thank you for being here and for giving us the benefit of your expertise and the information which you have received from the other hearings. I thank you for it.

Mr. **Matsui**. Thank you very much.

Mr. **Anderson**. Mr. Levitas?

Mr. **Levitas**. Thank you, Mr. Chairman.

I would like to congratulate you, Mr. Matsui, for your leadership in this area, for the action and interest that you have taken since you have come to Congress in the area of aviation safety. It demonstrates that California is still producing those Congressmen who are vitally concerned about the aviation industry. On our committee we have, of course, our chairman of this subcommittee, Mr. Anderson, and the chairman of our Oversight and Review Committee, Mr. Mineta, also from California, who have played leading roles in this entire subject, and your participation and leadership is very important.

Mr. MATSUI. Thank you.

Mr. LEVITAS. I take it that your feeling is that by having the aviation safety functions set up independently would have the effect of providing for more direct accountability and visibility of those persons who are involved in the regulatory and implementation process than exists where it is under the umbrella of the Department of Transportation. Is that one of the purposes?

Mr. MATSUI. Yes. I believe that you very aptly stated the correct position and the correct answer to Mr. Snyder's comments. I think it would give emphasis to airline safety to have an Aviation Safety Administration, and so the Administrator would be required to carry out that mandate. And, since it would be under the jurisdiction of the Congress, the Congress would have very close oversight of it. That is the basic essence of my proposal.

Mr. LEVITAS. The suggestion that was put forth in a question asked by Mr. Anderson to the effect that by having FAA under the jurisdiction of a Cabinet Secretary somehow enhances its status, at least to me, appears to give more weight to the form rather than the substance. Again, not addressing my concerns to Mr. Bond personally, but it has been my conclusion that the Administrator of FAA is somewhat removed from the reality of what is going on in that bureaucracy beneath him; a lot of decisions which should be getting up to the Administrator and the Deputy Administrator are not getting there. And when you talk about the Secretary of Transportation, it is almost ludicrous to think that he has any significant role in the ongoing operation of the aviation safety programs, based on my experience over the last 6 years.

Therefore, you are suggesting what I think a number of other people are suggesting, if I am correct, that by giving greater independence and more hands-on accountability and responsibility to the safety administrator, whoever that person may be, that the industry, the traveling public, and the Congress can have greater accountability and that the Administrator will be able to play a much more formidable role in operating the agency for safety. Is that essentially what you hope to accomplish?

Mr. MATSUI. Yes; that certainly is, Mr. Levitas, and you have stated that absolutely correct in terms of what I hope will come out of my bill.

Mr. LEVITAS. You made reference, Mr. Matsui, to something that has troubled me for quite some time, and that is what I consider to be the dual role that FAA has under the law that Congress passed. And I think if Congress creates a problem, we have got the responsibility to solve or cure the problem. But there would seem to be an inherent conflict of interest where, on the one hand, FAA has the responsibility of promoting the airline aviation industry economically and viably, and at the same time, making decisions that affect the safety of the traveling public.

It just seems to me that these two things, being discharged at the same time, and at the same place, are unavoidable conflicts. In fact, the GAO report that you refer to points out specific examples of where people involved in the safety regulatory area were taken off of their jobs and given responsibilities in the nonsafety area, resulting in delays in going forward with safety programs. Doesn't that seem to bear out your concern?

Mr. **Matsui**. Yes, it certainly does, Mr. Levitas.

Mr. **Levitas**. Thank you very much. I commend you. And I hope that at the next Congress, when we begin to mark up legislation, many of the ideas and suggestions you have put forth will be embodied in whatever product comes out of this committee.

Mr. **Matsui**. Thank you very much.

Mr. **Anderson**. Mr. Fary?

Mr. **Fary**. Thank you, Mr. Chairman.

I welcome my friend and seatmate, Mr. Matsui, and I appreciate his testimony very much.

Mr. **Matsui**. Thank you, Mr. Fary.

Mr. **Anderson**. Mr. Mineta?

Mr. **Mineta**. Thank you, Mr. Chairman.

Mr. Matsui, I appreciate the thoughtfulness and the kind of time that you have put into the work on the Government Operations Committee in analyzing this issue and how to go about it.

The concern I have is whether or not the problems that exist would be solved by the balkanization of the FAA. I think that is the core of the issue. Does having the FAA split into two functions, one dealing with operations and the other dealing with safety, solve the problem before us?

I am still not convinced that that is the case, because in the administration of the Trust Fund, there are many safety implications there, and yet that would be in the operations aspect of what you consider the Aviation Operations Administration. Yet, there are many safety implications in the administration of ADAP through the Aviation Trust Fund.

I was wondering how you would deal with that, considering the separation of that into two separate functions.

Mr. **Matsui**. Yes; Mr. Mineta, you raise some very good points that the chairman also raised. My proposal, as I indicated, is not a cure-all for aviation safety. I think it is a first step. It may even be considered by some a small step, but I think it is a right step in terms of aviation safety.

It would be my hope and feeling that there will be communication between the Aviation Operations Administration and the Air Safety Administration so that some of these issues can be resolved without the need of any major conflict.

So I feel strongly that it goes in the right direction. I feel that there will be communication between the two. But again, your comments are very aptly stated. It will not—and I can guarantee you this—it will not solve the entire safety issue of the airline industry.

Mr. **Mineta**. But I wonder if that communication would not be better under the one umbrella of the FAA rather than under two umbrellas of two administrative bodies, even under let us say the DOT. If it is administration and communications, whether or not that could not be more tightly coordinated under a single umbrella rather than—because like anything else here within the Congress, you always get into turf protection, and turf becomes more of a battleground than the substance of the issue.

I am wondering if we are not getting ourselves into a real problem.

Mr. MATSUI. Yes. Mr. Levitas' proposal would separate a safety function outside of the current FAA and keep it within the umbrella of the DOT, and I think that is a very, very worthy proposal and one that I certainly could accept.

The reason that I have separated my safety function completely outside of the DOT was because I felt somewhat strongly after those DC-10 hearings that we would have better control as a U.S. Congress over the safety certification and maintenance process, and that is why I took a different approach in that respect.

Mr. MINETA. I know that we all have the same concerns, and the issue is what is the road that we take to get to that same concern that all of us have, including those who are within the FAA and DOT right now. So I really do want to congratulate you on the kind of thoughts and the concerns that you have expressed. I want to thank you very, very much.

Thank you, Mr. Chairman.

Mr. ANDERSON. Mr. Ertel?

Mr. ERTEL. Thank you, Mr. Chairman.

I, too, Mr. Matsui, want to congratulate you on the thought and perception you have given this problem in bringing it to the attention of the subcommittee and really making a good effort to bring the safety issues forward.

I have some of the same reservations Mr. Mineta has in regard to separating these functions, whether or not it will eventually redound to the benefit of aviation safety, because as Mr. Snyder said, there are decisions that have to be made which cannot be made in a vacuum. The safety decisions in regard to the certification of an aircraft or how many pilots should there be cannot be made strictly on the basis that you are going to make a safe aircraft. An airplane is a compromise, a compromise of many things, and the same way with all decisionmaking in the process of flying an aircraft. And the pressures that Mr. Snyder referred to have to be resolved by somebody.

I am concerned that if you set up this Air Safety Administration and then have DOT, who is going to be the final decisionmaker to weigh all of those countervailing policies and come up with the ultimate decision? How do you reconcile those two things? Where is the final decisionmaker in the structure that you have proposed?

Mr. MATSUI. Yes, Mr. Ertel. Your comments are very well taken. My concern, of course, is one of the conflict of interest that we currently have. It was indicated that some of the pressures would be placed on the Administrator, and that would occur under any circumstances, and getting an airplane up in the air is a question of compromises. I guess cost factors go into it, safety factors go into it, and a wide variety of factors go into it.

But it is my feeling that when you have 273 people who tragically die, or 144, or whatever the case may be, in the future, we have to reemphasize and take another look at the situation, and perhaps we should not compromise so much. Perhaps we should not say we have got to get this airplane up in the air, and we cannot spend that extra dollar because it will just cost too much to us and to the consumer, because I think safety in this particular area, as you feel, and as every other person in this country feels, is obviously the No. 1 issue that we should face. More and more people will be in the air in the next 10 years; and it is going to increase dramatically, geometrically, in fact. And that being the case, I think we need a structure and a mechanism to make sure that that is what is emphasized and not the pressures and the compromises that we speak of that are under the current system.

Mr. **Ertel**. Well, couldn't we emphasize those safety features by making a more clear mandate to the FAA that they should take more primary emphasis, rather than separate them apart. It seems to me you can build a perfect aircraft maybe, safetywise, but it will be so expensive no one will ever use it. Therefore, it is a useless piece of equipment. So that is a compromise. And someone is going to have to make that decision and weigh and balance those considerations. But if you have that isolated in one administration, just strictly the idea that this thing is going to be as safe as it can be, they may not ever consider the fact that it is ever going to be functional, and in fact, be within the range that the American citizen can utilize. That is one reason we had the Aviation Deregulation Act, was to provide air transportation to the average citizen, to make it more reachable, more affordable to that individual. And we can always make something absolutely fast, but we always have to balance the risk, and that is where I am concerned about your legislation. Who is going to do that balancing?

Mr. **Matsui**. Well, it would be my hope that the balancing will actually be set forth in the legislation. And if each of the administrations set up, the Air Safety Administration and the Aviation Operations Administration, carry out their mandate, those decisions will be made in its natural order.

I just feel very strongly that if you have one person in charge of promoting aviation and that same person in charge of air safety, you are going to put him or her in a position of immediate conflict. And I think this was borne out in the DC–10 issue, on the whole maintenance problem, where there was, in my opinion, an improper way of passing out the maintenance manual. At the same time, I just think that the FAA relies, for example, under the current structure, too much on the technical expertise not of their own people but of the airlines in their certification and maintenance posture. And if you do set up a separate agency or administration, and if the person placed in charge of it knows that that is its mandate, then I think we would have a clear picture. We can tell the FAA under its current structure, "You had better start promoting air safety," but those other conflicts come up, by its very nature.

Mr. **Ertel**. May I just turn to one other area that gives me some pause. You have tried to distinguish between operational and safety, and I think the chairman pointed out very carefully that they are interrelated. But what happens, how is the structure set up? For instance, air traffic controllers, to my judgment, are one of the very important functions in the safety aspect of the utilization of aircraft. They can kill you just as fast as anybody else. All they have to do is give you a wrong course, land you on a runway with somebody else landing at the same time. I am sure you have got primary concern as a pilot, but still, that happens or can happen. There are midair conditions under IFR conditions.

How do you transfer the judgments on safety issues from the Air Safety Administration over, and get them implemented by the operational end of it when the one, the Air Safety Administration, is basically an independent agency, much like the ICC? How do they transfer that over to this DOT department and get them to implement that particular thing, unless you have got that under one umbrella, where you have that person who can coordinate those things?

Mr. **Matsui.** Well, again, my legislation is not a cure-all. It deals basically with the research, the certification, and the maintenance procedures of the current FAA. And if there is some way that this subcommittee could put the operation you speak of into an Air Safety Administration, I certainly would support that effort. My effort is a small step in the right direction. There will still be a lot of safety areas that the Aviation Operations Administration will have. I do have problems with it. But I wanted a bill that I felt was reasonable in the sense that it would have a reasonable opportunity of getting a hearing and also passing. I think if I made it too rapid of a structural change, it would be dismissed, and that is one of the reasons I took this middle course.

Mr. **Ertel.** I thank you very much. Your bill has certainly been thought provoking and caused us to think about some of the issues which we should think about, and I think you have done an excellent job of doing that.

Mr. **Mineta.** Would the gentleman yield?

Mr. **Ertel.** I would be happy to yield to the gentleman from California.

Mr. **Mineta.** Let me just pick up on something that you mentioned, Mr. Ertel, and that is, do you envision the Air Safety Administration as an independent body like the ICC, or is this an arm of the Congress?

Mr. **Matsui.** It would be an independent body under the jurisdiction of the Congress, of course.

Mr. **Mineta.** Under the jurisdiction of the Congress——

Mr. **Matsui.** It would be like the ICC, right.

Mr. **Mineta.** But it would be an independent agency, as such.

Mr. **Matsui.** Yes. We would not be able to call the Administrator up and say, "We want you to certify this, because"——

Mr. **Mineta.** Well, that is the part I started to think about, if safety is a consideration, and political pressures, economic considerations, and these kinds of factors, if it is an arm of the Congress, it seems to me it would be subject to all of these kinds of political pressures, and I am not sure that I would want to fly in an airplane designed by a congressional committee.

Mr. **Matsui.** Well, I assure you that that would not be the case. Instead of calling the Department of Transportation Secretary up, we would call the Administrator of the Air Safety Administration up. That is the difference.

Mr. **Mineta.** Thank you.

Mr. **Ertel.** Thank you very much. I yield back the balance of my time. But I would like to point out that I, too, value my life, and I appreciate the Congress, but I am not going to fly in an airplane designed by us.

Mr. ANDERSON. Ms. Ferraro?

Ms. FERRARO. Thank you, Mr. Chairman.

I share the concern of both Mr. Mineta and Mr. Ertel with reference to the separation of the two features. I would like to know, do you provide for any sort of an appeal from a decision of the Safety Administrator? Where would that be appealed?

Mr. MATSUI. No, there would be no appeal in it. I suppose if there is an abuse of discretion, the airline in question probably could go into the Federal courts to pursue their remedy there, but there would be no right to appeal from the decision of the Administrator, just as if the Secretary of the Department of Transportation—I suppose he would be the final right of appeal under the current system—there would be no right of appeal beyond his decision.

Ms. FERRARO. So that if the Safety Administrator said, "Forget it, it is no good, it does not meet our safety requirements," then that would be it?

Mr. MATSUI. Right.

Ms. FERRARO. Wouldn't that have some sort of a hampering or dampening effect upon the industry as a whole? I mean, you have talked about conflict between safety and operation. It seems to me that there comes a time when you have to have someone in a position to weigh the merits between the two and be reasonable.

Mr. MATSUI. I would hope that we would—I do not mean this facetiously, because I know some people think that we do not—but I would hope that we would appoint people who understand the industry and who are reasonable in their approach when they decide to certify or set up a maintenance procedure. So I would hope that we would not have decisions that are capricious and arbitrary. And I would feel basically, if we got the right person, we would feel comfortable under that system, and the airlines should be happy through the process.

Ms. FERRARO. I think it goes a little bit further than you realize, though. I conducted some hearings in my district a week ago Friday, on air safety and air traffic controllers, and one of the things that was brought up at the hearing was the air traffic controllers said that if the FAA did not work with them and did not give them modern equipment, what they were going to do was they were going to follow the rules of the FAA right to the line, and they were going to keep everything by the book. That translated to me to a slowdown. They insisted that it was not. But evidently, the rules are on the books. The FAA has those regulations in effect, but I guess in the day-to-day operation of the airports and the industry, they do not slide over them, but they do bend a little bit; they do not always follow the book as it is.

And I think that if you have a separation of the two agencies, if you had the safety in one and the operational in the other, you might not be able to be flexible in dealing with the industry as a whole.

Mr. MATSUI. Well, it would be my hope that whoever is in charge and whoever that person hires will interpret the rules in a reasonable way, whatever rules are promulgated. So I would feel that no matter what system we are under, that is a problem, I suppose, under whatever system we have, whether or not the person would in fact abide by the rules in a reasonable way.

Ms. FERRARO. Do you think another approach might be just getting the FAA to get their act together?

Mr. MATSUI. Well, I certainly promised myself before I came here that I would not get involved in personalities, but I suppose there could be something said for that. At the same time, I do not think it is a question of Mr. Bond or anyone else. I think it is really a question of the built-in conflict of interest that we have. I think Mr. Levitas' proposal, for example, goes a long way in resolving that conflict of interest. I think my proposal is another approach in the right direction to resolve that conflict. I think to put an individual in a position of having to promote aviation and at the same time, insuring the safety of the passengers, is a burden that is very difficult, and I think there should be some separation whatever the umbrella may be.

Ms. FERRARO. Thank you very much.

Thank you, Mr. Chairman.

Mr. ANDERSON. Mr. Hutchinson?

Mr. HUTCHINSON. Thank you, Mr. Chairman.

I, too, would like to join with our colleagues and congratulate Mr. Matsui on his initiatives and his interest in this area, and I will forgo any questions at this time.

Mr. ANDERSON. Thank you very much, Mr. Matsui, for an excellent presentation. We gave you a lot of time this morning.

Mr. MATSUI. You did, and I appreciate the subcommittee's attention.

Mr. ANDERSON. We now have a quorum call followed by a 5-minute vote, so at this time we will recess and come back in about 20 minutes.

[Short recess.]

Mr. ANDERSON. The meeting of the committee will come to order.

Our next witness is the Honorable Langhorne Bond, Administrator of the Federal Aviation Administration, accompanied by Tom Allison, General Counsel to DOT.

TESTIMONY OF HON. LANGHORNE BOND, ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION, ACCOMPANIED BY THOMAS ALLISON, GENERAL COUNSEL, DEPARTMENT OF TRANSPORTATION, AND CLARK ONSTAD, CHIEF COUNSEL, FEDERAL AVIATION ADMINISTRATION

Mr. BOND. Thank you, Mr. Chairman.

I also have another lawyer with me, Clark Onstad, on my right, Chief Counsel of the FAA.

Mr. ANDERSON. Mr. Bond, we do have your prepared statement, and it will be made a matter of the record.

[Statement referred to follows:]

STATEMENT OF THE HONORABLE LANGHORNE M. BOND, FEDERAL AVIATION ADMINISTRATOR, BEFORE THE HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION, SUBCOMMITTEE ON AVIATION, CONCERNING LEGISLATION TO CHANGE THE FAA'S ORGANIZATIONAL STRUCTURE. AUGUST 20, 1980.

Mr. Chairman and Members of the Subcommittee:

You have asked me to appear before you today to present the Administration's views on several bills, two of which are intended to change by law the organizational structure of the FAA and one which would separate the FAA from the Department of Transportation. I am pleased to be given the opportunity to discuss these legislative proposals because I feel strongly that the enactment of any one of them by the Congress would be a mistake; a mistake that would impair the government's ability to deal comprehensively with aviation safety needs.

The bills before the Subcommittee are: H.R. 6771, H.R. 7850, and H.R. 351. I would like to discuss H.R. 6771 and H.R. 7850 first since the approach of these two bills is somewhat similar.

The thrust of H.R. 6771 is to direct the Secretary of Transportation to identify and transfer to the Office of the Secretary all functions of the FAA which are determined not to be related to aviation safety. H.R. 7850, using a slightly different approach, would fragment the FAA by establishing an independent agency, called the Air Safety Administration, which would be responsible for aircraft and airman certification, the safety regulation of the aviation industry, and research and development functions. Another organization, called the Aviation Operations Administration, would remain within the Department of Transportation with responsibility for operating and maintaining the air traffic control system, administering National and Dulles Airports, administering the airport grant program, carrying out the FAA's hazardous materials functions, and administering various provisions of the Aviation Safety and Noise Abatement Act.

These two bills have been proposed in apparent response to the recent GAO report which looked at the performance of the FAA. It is also my understanding that the bills' sponsors see the bills as a means of divorcing the FAA's purportedly inconsistent dual charter to promote aviation and to make it safe.

Let's look first at the GAO's conclusions. Briefly stated, it was the GAO's opinion that the FAA has not always responded quickly enough to meet the demands of aviation safety, and that the FAA's planning processes were not sufficiently developed to enable the FAA to be ahead of the power curve and to prioritize its work to meet best the needs of aviation safety. As with any general statement, there is some truth in their findings. I would point out, though, that there are many things I have done in my term as Administrator to work towards making the system more responsive to the needs of aviation safety. And we have made progress. I would also add that we have acted to put in place a better coordination and planning process within the FAA, which we can discuss later if you would like. That effort was the logical follow-on to my efforts to realign and revitalize the FAA's organizational and management structure and could not have been implemented effectively before the organizational changes were in place. I would also observe that the GAO did acknowledge that a variety of efforts had been undertaken within the FAA to better our ability to promote safety. Nonetheless, as with any bureaucracy, there are times when we have not performed well. On the other hand, there are many areas in which we have performed splendidly, and I will compare the FAA's day-to-day record of operations against any other Federal, state, or local agency.

The record of aviation in the United States is unsurpassed by anything else of which I can think. Since the creation of the FAA in 1958, there has been steady, and in some cases dramatic, progress towards improving the safety of our air transportation system. The FAA has installed more and more navigational aids throughout the system, and the quality and reliability of those facilities has gotten increasingly better. Our air traffic system, today, is the most sophisticated and safest in the entire world. The aircraft and avionics we build and use in the United States are of the finest quality. Though there have been claims that these improvements somehow took place without the FAA's involvement, anyone familiar with the history of the aviation industry knows that to be an absolute distortion of the facts.

I see nothing whatsoever to be defensive about in the way the FAA has worked to make and keep the United States' air transportation system the best in the world; and it is the best. To the contrary, I firmly believe that the FAA's employees have a lot for which they should be proud. Unfortunately, in our society, people are seldom given recognition for the good things they do. The attention is focused on the rare accident that inevitably occurs. Yet, the amount of attention that is focused on that rare accident says something to me about peoples' expectations of the performance of our air transportation system. The performance of that system has gotten so good, and peoples' expectations of how well the system performs have grown so high, that an aviation accident draws attention in a manner unlike that found in any other mode of transportation.

Does the fact that we have the finest air transportation system in the world mean that it can't be improved? Of course not. I have spent three years, and others have spent full careers, working to find ways that the safety of our system can be improved.

The reason I think it's crucial that we focus on how well the system works is that I believe it's a fair, and perhaps the only objective, measure of how well the FAA has fulfilled the responsibilities given it by the Congress in 1958. I strongly suggest to the Members of this Subcommittee that, when you consider the merits of any legislative action based upon the GAO's conclusions, you keep in mind the performance of our present system.

Having offered some general philosophy regarding the bills, I would like to offer some specific observations.

H.R. 6771 would have the Secretary identify and transfer all functions of the FAA not related to aviation safety to the Office of the Secretary. It is unclear to me exactly what functions of the FAA could be construed to be unrelated to aviation safety. Virtually all functions performed by the FAA bear a relationship to safety. The airport grants program has made many important contributions to the safety of our system.

Our research and development programs provide the foundation for major advances in aviation safety. Efforts to reduce aircraft noise must be directly tied to safety assessments, with noise abatement procedures requiring thorough operational review and reductions of noise at the source requiring airworthiness review. This safety relationship was expressly recognized by the Congress which directed the FAA to consider whether any proposed noise standard or regulation is consistent with the highest degree of safety. The people in our policy and plans offices help us to get ahead of the power curve by forecasting what the future air transportation system will look like, enabling us to put together a system that will safely meet those needs. Virtually all FAA functions are linked to safety.

If the intent of the bill is that FAA's administrative functions should be considered unrelated to safety and transferred to the Office of the Secretary, this would seriously impair our ability to carry out our safety mission. There are a variety of administrative-type functions common to all large organizations, whether in the government or private sector. These functions encompass such areas as contracting and personnel management. The FAA has a number of specialized needs which must be understood and fulfilled by its administrative structure. For example, the FAA has a number of specialized training needs for its controller and electronic technician workforce. I think it's apparent that the FAA's expertise in air traffic control and air navigation systems puts the FAA in the best position to define training needs as well as to develop and carry out programs to meet them. The same holds true in other areas. For example, the specialized nature of the equipment provided by the FAA and the complex nature of our R&D and equipment contracting argue strongly for the FAA to retain its own logistics capabilities. FAA's over 19,000 operating facilities located throughout the U.S. and the world also argue for the FAA to retain control of its materiel support system. There are many other examples which could be cited demonstrating a convincing need for the FAA to retain control over its administrative processes.

In short, it would be detrimental for the FAA's administrative capabilities to be transferred to the Office of the Secretary. I am unsure what other kinds of functions performed by the FAA would be considered by the bill's sponsor to be unrelated to safety. I would be pleased to discuss with the Subcommittee any function performed by the FAA and offer my views concerning the relationship of that activity to safety. I believe you will find that the performance by the FAA of industry promotion functions in contrast to the performance of safety functions has been grossly exaggerated. In fact, you will see that there already exists an organizational delineation between the Office of the Secretary and the FAA over the performance of "promotional" activities and safety functions. The FAA performs the safety functions. The Office of the Secretary bears responsibility for performing such functions as filing comments on aviation economic issues with the CAB and negotiating international aviation economic issues.

I would like to turn now to H.R. 7850. This bill is potentially the most damaging of all to the government's ability to deal with aviation safety issues. This is because it would fragment what is now a coordinated approach to aviation safety.

H.R. 7850, if enacted, would take us back in time to the period in which aviation safety responsibilities were borne by several agencies. Following the tragic midair collision over the Grand Canyon and the tremendous furor which arose, the Congress and Executive Branch took a close look at aviation safety responsibilities in the Federal Government. Out of that review grew a clear consensus that the fragmentation of aviation safety responsibilities had created an intolerable situation that needed correction. The corrective measure was the establishment of the Federal Aviation Agency, an agency in which all aviation safety functions, other than accident investigation responsibilities, were consolidated under the leadership of one person, the FAA Administrator. Through placing all aviation responsibilities in one agency, the needs of aviation safety could be assessed comprehensively on a systematic basis, maximum management discipline could be exercised over the conduct of those responsibilities, and accountability for the performance of aviation safety responsibilities was clear for the first time. All legislative changes in the structure of our air transportation system which have occurred since the inception of the FAA have recognized the continuing need to leave unimpaired that centralized responsibility for aviation safety.

Since 1958, the FAA has been in a position to consider in a comprehensive manner the total needs of aviation safety. Operational regulatory needs, air traffic system needs, equipment needs, airport needs, and future needs to be met by R&D could all be assessed by the FAA and the proper balance struck. H.R. 7580 fails to recognize the relationship and need for coordination that exists between all facets of the aviation activities carried out by the FAA. By establishing two separate agencies this legislation would impair the government's ability to coordinate effectively these activities. Just to cite one example out of many possible examples of this relationship, the bill totally fails to take into account that the R&D activities of the FAA bear a direct relationship to the functions performed by the operating elements of the FAA. R&D is not a function performed by the FAA solely for the sake of performing R&D; R&D activities are conducted by the FAA to meet present or future needs defined by the operating elements of the FAA which are the users of the products developed through our R&D efforts. Even after the development of a product through FAA's R&D efforts, close coordination must be maintained with our R&D organization by the operating element charged with implementation of the product or service, and frequently follow-on R&D efforts are necessary to achieve further refinements. Briefly stated, the bill does not recognize that each element within the FAA is not a discrete element which can responsively deal with aviation safety needs in an independent manner. The activities performed within the FAA by virtually any organizational segment need careful and continuous coordination with other elements of the agency.

It is clear to me that statutorily dividing the FAA into separate "regulatory" and "operating" elements would be a mistake. As I mentioned a moment ago, it would be turning back the clock on aviation--despite the fact that all indicators of aviation industry performance show that great progress has been made since 1958 by granting all aviation safety functions to one agency, under one central authority.

H.R. 351 would leave the FAA intact but would remove the FAA from the Department of Transportation. In essence the FAA would revert to the status it held from its creation in 1958 until the creation of the Department of Transportation in 1967. The Administration opposes this bill also. In a very real sense it would turn back the clock. The bill would work against the very reason for the establishment of the Department of Transportation--that consistent, integrated transportation policies and a balanced national transportation system can best be achieved by a single Federal Department with multimodal responsibilities. The exclusion of any major mode of transportation from the Department's responsibilities would been impair the Federal government's ability to develop and maintain a sound National Transportation Policy effectively addressing all facets of transportation.

There are also benefits which accrue directly to the FAA, and hence to the public, from FAA's inclusion in the Department of Transportation. Among them are the fact that domestic and international aviation interests are represented at the Cabinet level; research and development efforts in other transportation modes are more easily transferred to Federal aviation programs, and vice versa; and balanced and integrated transportation planning is promoted by the Department's assessment of the needs of the various transportation modes, which facilitates the development and implementation of transportation programs that recognize, use, and integrate the best attributes of each mode.

Mr. Chairman, I am not sure what has been the triggering factor for the legislation currently pending before the Subcommittee to reorganize the FAA. I have listened to the "promote" versus "safety" debate for some time now, and don't believe there is sufficient substance in that debate to have spawned the legislation. It is possible, though, that the bills may reflect concern that part of the safety equation calls for an assessment by the FAA of the cost/benefits of a proposed safety action. But that is a legitimate concern of any regulatory body. There is no such thing as an unfettered response to safety needs. Let me explain.

There are numerous factors, dictated by law or practicality, which bind the FAA, or any agency, in performing its mission. I want to make it clear that I am not expressing opposition to the existence of these factors; to the contrary, most have resulted from a balancing of an unrestricted exercise of government discretion with broader principles that foster the general public welfare. Most serve legitimate, useful purposes. I think it's important, though, to keep in mind the kinds of processes which govern "how" as well as "how quickly" an agency can perform its mission.

Let me briefly enumerate some of these controls. First, there is the budget process. With limited resources, there will inevitably be needs that remain unfulfilled. This is true of the FAA, the same as it is for any Federal, state, or local agency. The budget process is a fully, legitimate exercise in which an individual agency's priorities are examined and balanced with competing needs of other agencies. Thus, it becomes important to determine where resources can best be applied. There are also numerous Federal Procurement Regulations. These regulations, frequently based on statutory requirements, have evolved over the years and are designed to assure that government agencies not only maximize competition but also carry out a variety of socio-economic policies of the government. Following the numerous contracting procedures extends the time necessary to procure safety equipment. Simply stated, we cannot always get safety equipment into the system as quickly as we would like, given the time lags associated with the budgetary and procurement processes. There are environmental laws and regulations we must follow. Even when a safety need is identified, there may be lengthy delays associated with obtaining necessary environmental approvals. There is the Civil Service system. Significant benefits have been attained through enactment of the Civil Service Reform Act. Yet, it can still be difficult for a government manager to take necessary personnel actions in a prompt manner. Moreover, the pay structure does not adequately recognize or compensate an employee who lives in a high cost area, making it tough for the FAA to attract high quality employees in sufficient numbers to a number of locations in the United States. Also, it is difficult to attract top quality employees from the private sector to the FAA because of the salaries which are offered in the private sector. The FAA must also be responsive to the will of the Congress and the public. Controversial rulemaking activities can severely hamper an agency's ability to perform its mission. That fact was clear when we initiated our rulemaking efforts to establish controlled visual flight rules and to add more terminal control areas to the system. When we proposed that all passengers aboard an air carrier aircraft keep their seatbelts on during flight, there was an outpouring of negative sentiment, including opposition from the Aviation Consumer Action Project. We also must follow, except in emergency situations, the Administrative Procedure Act. The Congress requires that the public be given a full opportunity to participate in agency rulemaking activities. This is as it should be. But it takes time to draft the proposed rules, to publish them for comment in the Federal Register, to allow sufficient opportunity for public comment, and to consider the public comment received. We are also required to follow the requirements of Executive Order 12044 in our rulemaking activities. The order requires consideration of costs and benefits and careful assessment of proposed rules before their issuance. It's a sound process that has benefited all parties in the regulatory process, but it does prescribe additional requirements that an agency must follow before promulgating rules.

The point I want to make is that the FAA cannot, as a rule, look at the system, decide unilaterally what changes it wants, and then make those changes overnight. Numerous processes govern our ability to do what we think is right. Where unusual circumstances exist--such as when I grounded the DC-10 fleet--we will act immediately to take whatever action is necessary. But, more frequently we must follow the normal processes and be able to offer full justification, both in a legal and practical sense, for the actions we take.

Before closing, I want to touch on the Blue Ribbon Panel report on the FAA's certification processes. Though we are not in a position to tell you at this time what specific actions will be taken in response to the report's recommendations, I will say that I believe the report reflects the hard work that was put into it by a number of exceptionally well qualified people. It is clear to me that it was well thought out and the recommendations carefully considered. A significant point I would like to make about the report is that nowhere in the report is there the suggestion that the FAA should be statutorily reorganized or fragmented. Internal realignments within the FAA are recommended and the report discloses the Panel's opinion that the FAA is suffering from some of the ailments common in middle-aged regulatory bodies, the remedies for which are administrative in nature rather than legislative.

As for the status of our response to the report's findings and recommendations, we are carefully assessing within the FAA what our proposed response to the report should be. All regional offices with certification responsibilities and appropriate headquarters personnel are participating in this effort. I will be briefed shortly on proposed responses to the report, and the FAA's input will be provided the Secretary of Transportation the beginning of September. Secretary Goldschmidt, who commissioned the study, will make the decisions concerning the actions that will be taken in response to the report.

Mr. Chairman, that completes my prepared statement. My associates and I would be pleased to respond to questions you may have at this time.

Year	1957	1958	1967	1968	1977	1978
VOR/VORTAC *	486	556	959	952	1021	1020
Towers *	121	128	255	271	495	494
ILS *	165	171	264	279	678	698
Airport Surveillance Radars *	42	47	117	155	182	185
Passengers Carried (millions)	47	45	119	133	222	254
Passenger Miles Flown (billions)	25	26	79	87	166	192
Accidents	53	42	67	44	15	18
Passenger Fatalities per 100 Million Passenger Miles	.1	.43	.29	.30	.038	.007
Accidents per 100,000 hours	38.4	36.4	27.6	21.1	12.0	12.6
Fatalities per 100,000 hours	4.0	3.1	2.7	2.9	2.0	2.2
Civil Fleet (Registered) (1,000's)	67	70	116	127	215	237
Air Carrier Fixed Wing Aircraft (1,000's)	1.8	2.0	2.5	2.6	2.5	2.5
Aircraft Activity at FAA Towers (millions)	25.1	26.6	50.0	55.3	66.7	67.2
IFR Aircraft Handled by Centers (millions)	8.0	9.0	16.6	19.4	26.0	28.0
Certificated Pilots (1,000's)	309	354	618	692	784	799
Other Certificated Airmen (1,000's)	149	157	232	250	349	362

* Includes a limited amount of non-Federal & military facilities.

Mr. BOND. Thank you, sir. I will just go through and pick out some of the highlights of my statement.

I have begun by looking at the General Accounting Office's report in here. I think it is fair to summarize it to say that while the GAO has recognized the excellent record of safety that has been achieved to date, they feel that we might have moved more quickly in some areas, and they have proposed a series of internal, paper-type steps to better reach the goals that they perceive that would achieve.

I also want to point out that the record that aviation safety has achieved since the FAA was established in 1958, and continuing on through today, is excellent. I do not feel very defensive about the record over the years that has been achieved by my agency. By almost any human standard that I know, the record is excellent. And as you and other members of this committee have correctly pointed out, it is getting better, steadily better, as more and more air traffic control equipment is installed in our system, as it gets more reliable, and as equipment becomes more reliable generally.

My view is that traveling on a scheduled airliner is safer than almost anything, even than staying in bed. And I have told my friends that if they want to be safe, they ought to get on a scheduled airliner, and they can hardly be safer.

Turning to the various several bills that are before the committee today, H.R. 6771 suggests that the Secretary of Transportation identify all functions now in the FAA which are not related to safety and transfer them out of the FAA to the Secretary's office. I have had some difficulty with this particular piece of legislation because, having reviewed what is in our agency, I can find almost nothing that is not classifiable as safety related. The present structure of the FAA in relation to our parent agency, which is the Department of Transportation, has today a very clean separation between safety and operational responsibilities on the one hand and economic regulatory ones on the other. We do the safety and operational portion of it, and the Secretary's office looks after CAB filings, economic decisions, and so on. We have already achieved that, and it represents both the Administrator of the FAA's view and the Secretary's view over the years, that safety should be focused in the FAA. And my experience at the FAA has been very supportive of that split. Perhaps later on in the questioning, we could discuss some of the details of that, but I find almost nothing that would be reported by the Secretary to be taken out of the FAA.

H.R. 7850 is the one that I regard as the most threatening of all to the safety responsibility of the FAA. I think it is alarming. It represents for the first time in more than 20 years a proposal to end the unified, single-accountable approach to aviation safety that has been in place since the Grand Canyon crash.

I cannot believe that two masters of a single subject is the most efficient way to run something. I believe that it will reduce accountability rather than increase it. The notion that two people in charge of aviation safety rather than one can increase accountability is to me bizarre and flies in the face of logic. It would, among other things, create a crack between the two agencies into which many issues would undoubtedly fall. And I and the Administration strenuously oppose that proposal.

I might add that during the testimony this morning, it was also proposed that this change would increase the visibility of aviation safety. I would like to ask the author of that statement what it would be increased over. My experience has been in the last 3 years that it is difficult to conceive an increased visibility for aviation safety.

Finally, there is the legislation which I believe Congressman Goldwater has introduced to make the FAA an independent agency. We also do not support that. I had a hand in 1965, when Congress first considered the establishment of the Department of Transportation in just this issue—in fact, other issues that are related here, but this one particularly—and the FAA was placed within the Department. I thought the decision was correct at that time when the Congress passed it, and I still believe that that is the case. There are many benefits that accrue to us in the FAA from having a single unified transportation agency under the aegis of the Secretary. Safety is unimpeded by it, and research crossover and other benefits, as well as the integration of the operation of the system, as Congress had hoped would be the case in 1967 when that bill became law, have been realized, in my opinion.

My statement concludes, however, with a listing of issues which have not been brought forward in the bills that have been proposed before this committee and which in effect do constitute limitations on the ability of the FAA Administrator to pursue an unfettered safety course.

My greatest problem with these various proposals is that they do not really hit onto the issue that is at stake. It is true that the FAA Administrator, as well as the Nuclear Regulatory Administrator and the Secretary of Defense and so on, cannot pursue their goals without consideration of some limitation. And I have listed them here because I think that it is important for the Congress to understand from my perspective as a manager what are the daily obstacles that we run into that either delay or impede a little bit the safety process. They involve harder choices, incidentally, than reshuffling the bureaucracy, and therefore, I believe that some of the proposals that have been put before this committee involve easy and popular choices, but do not go to the heart of the matter.

The first and most important limitation on our actions for safety investment is the budget process itself. We do not have the ability to get all of the money for aviation safety that would be optimal. No Federal program can achieve that. The budget process requires our requests for investment to be compared with those of highways and maritime and mass transit and for health care and for educational investment and so on, and that prioritizing process, the competition of legitimate Federal investment needs, results in something of a reduction for all Federal investments. The budget process does constrain us. It would constrain us if we were not part of the Federal DOT. If we were to be made to report, for example, directly to the President, as another bill proposes, we would also be subject to the budget process. I think, incidentally, that the budget process is right. I do not support a notion that our investment, any more than that for hospital care or highways or anything else, should be without financial constraint.

The Federal procurement regulations are another constraint on quick activity by the FAA. There has been a good deal of congressional interest in the time it takes for us in the FAA to acquire safety equipment; once the money is appropriated, the time it takes for us to buy and install it. The Federal procurement regulations, in my opinion, are an awful, tangled mess. Every possible interest that a vendor could have in the purchasing process to the Federal Government is protected. Appeals are provided. Elaborate processes are established to make sure that justice is done, and in this process, it takes the FAA a very long time to acquire safety equipment. It takes more than 3 years on average for us to commit to contract our appropriation for safety equipment. The Congress recently extended the lapse period for our funds from 3 to 5 years after a study that indicated that the amount of time that it takes the FAA is about the same as it is for the Defense Department, and is in line with what has been the experience for complex technological equipment purchases. So we are doing as well as can be expected, and it takes a lot of time.

The environmental laws are another limitation, also equally defensible in their characteristics. But we must calculate the environmental cost that underlies runaway investments and now, increasingly, even in air traffic control techniques.

I have discussed this before the committee, but I would like to cite the case of the instrument landing system that we proposed to put into Montgomery Airport in San Diego, which is a reliever. We ran into problems with the San Diego Mesa Mint, out near where our electric equipment would be installed, and we had to write a statement showing that there was going to be no negative benefit.

There was also during the year—in San Diego, it rains a lot in the winter, so we had to do a wetlands statement just for our ILS and our approach light system. We have done that, incidentally. We have gotten it behind us, and the ILS is now operational. It is a legitimate public interest constraint on our freedom of activity, but it has not been addressed by this committee as if it were an obstacle.

From a managerial point of view, I find especially difficult the problem of all of the constraints that are built into the civil service system itself. The individual protections that are accorded to Federal employees are voluminous. They make it almost impossible for a manager of a Federal agency, such as myself, to fire someone who does not do the job well. There are many, many protections built into it. It is equally difficult for us to reward excellent performances under the civil service system, either with money or promotion largely out of the steady, dignified track that the civil service system contemplates.

There is a legitimate reason behind all of this, but the point is that the Federal manager, from where I sit, has not got the ability to move swiftly toward excellence and that involves, of course, negative actions on people who do not perform as well. That is true of all other Federal agencies, of course. In fact, everything that I am listing here is an obstacle to all Federal agencies in performing their duties—a circumstance which was alluded to by the Blue Ribbon Committee, incidentally.

The public interest, the congressional interest, also are checks on our ability to act in an unfettered way. I list them there. We can have public interest suits against us, for example, under a variety of laws. They stop us a lot, and congressional interest does. And I put them forward because I do not believe that they are wrong. I believe that every Federal agency ought to be constrained in some legitimate way, especially by the political process as represented by the Congress. I have no problem with it, but we have to cut our sales to meet that constraint.

Also, the Administrative Procedures Act; it takes a long time for us to fight our way through before we can publish a rule. Hearings, comment periods, notice of proposed rulemaking, advance notice of proposed rulemaking, all of those are factors. The final report has to accurately and fairly summarize all of the comments that have come in. That is a constraint on our unfettered ability to drive toward safety.

Also, Executive Order 12044, which has been endorsed by Presidents, both of Republican and Democratic persuasion, requires us to do cost benefit studies of any particular action that we might take. And in effect, that is a very significant limitation on our ability to drive for an unfettered safety goal, if the cost is enormous and if the benefit is miniscule. While this order does not bar our doing something, it requires us significantly to justify the rationale of what we do. And we have to adhere to that order.

So I wanted to list these items, which are constraints on any agency and put them before the committee.

That concludes my statement's summary. Thank you, Mr. Chairman and members, for your patience.

Mr. ANDERSON. Thank you, Mr. Bond, for your presentation. The report of the Committee on Government Operations on aircraft certification concluded that in regulating the design phase of aircraft certification that the FAA has overdelegated its regulatory responsibility and authority to designated engineering representatives to the extent that the industry regulates itself.

Have you reviewed the findings of this report on delegation of authority to DER's, and if so, are any changes in the system of delegation of authority contemplated?

Mr. BOND. Yes, and perhaps, to the two questions.

We have reviewed the DER system, and our review has convinced us of the correctness of the DER system. I have yet to find significant error or deviation from authority that has been made by a DER in the manufacturing process. It has never come up to us, and while the possibility for some conflict of interest exists, the reality of it has not.

The blue ribbon committee, headed by Chairman Lowe, also looked into this process, was equally unable to find any problem with it, and reaffirmed its fundamental correctness. We are, however, considering some additional regulation of the DER process, perhaps periodic examinations of qualifications, perhaps a little tighter review of how the folks in the DER system operate. But overall, we believe that it saves the Government money, that it gives us the benefit of technical expertise which we could probably not obtain, and that it has worked very much in the public interest.

Mr. ANDERSON. The Government Operations Committee also recommended that the FAA develop a plan to open the certification process to interested and qualified parties to determine whether the process can be opened in a way which would protect trade secrets, minimize delay and to avoid dilatory tactics for nonsafety reasons. I would appreciate your comments on the desirability of an experiment to open certification procedures.

Mr. BOND. I have considerable sympathy for that finding of the Government Operations Committee and for other comments that have come in on that subject, including those of the blue ribbon panel. All along, I have suggested that more open participation in the certification process could well be a very good idea, though I was not sure exactly what the terms of that ought to be.

A historical statement first. For the most part, no one has seriously sought, to my knowledge, to intrude themselves—no group has—in the certification process in the past. There have been comments on this, but for the most part, no concerted effort has been made, so it has operated more or less in the past as a private arrangement, but not necessarily so. The case has been brought to a point, with the DC9-80, which has been subject to a great deal of debate between ourselves and the Airline Pilots' Union, concerning the crew complement issue, two-pilot versus three-pilot, and other safety issues that the union also has been interested in. And, using the tools of the Freedom of Information Act and also meeting informally with us, throughout the certification process, I believe that the Airline Pilots' Union has been given a good look at the certification process constrained only by one additional law, and that is the right of the manufacturer to protect proprietary information. That we cannot violate, that we should not violate, and do not intend to do so.

Other than that, in the DC9-80 certification process, we have in fact been very open. There have been meetings, for example, between our certification team and the Pilots' Union—and between the manufacturer and anyone who is interested in it—I have met numerous times with folks who are interested in this process. We have provided written explanations of what we are up to at various stages of this process. We have published our schedule in the Federal Register as we worked our way through the problems that came up with the aircraft, and we are planning to publish a large, explanatory document—that high, I believe—when the aircraft is finally ready for certification, so that the public and the interested groups will have an opportunity to see what we were up to.

Also, it is our plan, as has been suggested previously, in the future, in the case of large certification projects, to publish in the Federal Register the certification basis which we offer for aircraft at the very beginning of that process. That has been something that has been suggested to us, and I endorse it enthusiastically.

One final note on openness of the certification process, which I believe confirms my statement that we have been open where openness has been sought. I would like to note for the record that the Lockheed 1011-500 model, which is a new derivative model with longer range characteristics, was tested and certified, no attention was paid to it, and therefore there was not much openness involved with it, and it just happens that that aircraft is staffed with a three-crew cockpit.

Mr. ANDERSON. H.R. 351 would make the FAA an independent agency separate from DOT. Under the current arrangement, what type of aviation issues does the FAA have to clear through the Department, and what type of issues does the FAA deal with on its own. When issues with safety implications are cleared with the DOT, are there many instances in which the DOT gives more weight to cost and less weight to safety than the FAA?

Mr. BOND. Other than the budget process, which I alluded to before—I regard that as an major safety investment effort, and it is submitted to the Department, compared by the Department with other investment priorities and then by the OMB with other investment priorities—our primary contact with the Secretary's office is in the development of regulations.

Secretary Adams signed a Department order that required that major—not minor, but major—FAA regulations be submitted to the Secretary's office for review and approval. We have done so, therefore, since that order was signed by Secretary Adams.

Our experience with that has been good. I have no complaints to file as I said when I testified here with Secretary Goldschmidt previously. The review process by OST takes 30 to 60 days, and the general tenor of the comments from those who review the safety rules is, "Did you figure out the cost benefit ratio right, and have you done a good job?" I do not believe that we should be immune from that kind of review, and it has not, in my opinion, caused any derogation of our safety regulatory authority. Our own rulemaking process, as many folks who are here today know, is not as fast as it could be, and that is our fault, and the 30 days additional or so that are required by the Secretarial review process can hardly be said to have delayed our process very much, and do not.

Mr. ANDERSON. There has been a discussion of a conflict between FAA's safety responsibilities and its promotional responsibilities, and I have two questions on this point.

First, what weight do you give promotional responsibilities in reaching safety decisions?

Mr. BOND. Mr. Chairman, none. I have not, in any of the regulatory decisions or tough safety decisions that have come up before me, I have never had the issue of the FAA's promotional responsibility raised to me by any of my employees, and I have never myself applied it. Always the question has been does it really promote safety; that is all.

Mr. ANDERSON. Would you concede that you have some responsibilities which do not have much relation to safety, such as administering the aircraft loan guarantee program, administering the airport terminal development grants, and administering a program of grants for land purchases for noise abatement. Would you do a better job with your safety responsibilities if some of these nonsafety responsibilities were taken from the FAA?

Mr. BOND. As for the first question, the answer is indeed, yes; they do not have very much to do with safety.

We have gone down through our FAA programs and tried to find those that have not much to do with safety. It is correct that the loan guarantee program, which employs a total of 6 people in our 55,000-employee agency, does not have very much to do with safety, although it encourages the placement of new aircraft, including commuter aircraft in the system, but it is only relative to safety.

The reason that it is in our agency is that the Secretary's office and the FAA have always thought that the operational aspects of civil aviation ought to be down in the FAA. Our people know the folks that we regulate, and this little, tiny program was located in the FAA for that reason. It is over in our policy office, and it cranks along, I think, administratively successfully, and it certainly does not impede our safety mission in any way. So that is one.

The terminal grant program is another one which cannot be said to have anything to do with safety. Over the course of the ADAP program, since it was established in the early 1970's, we have granted, or the applicants have requested, really, because they have an automatic right to their money, a certain portion of it for terminal money, about $7.5 million out of $400 or $500 million per year, times 10 years, about $75 million has gone to terminal development. That is cumulative. That is the total over that period of time. We do not review that particular portion of the ADAP program for safety standards, because there are none involved in terminals, of course, as we do for runway grants, and it is merely there as a convenience. We have an airport grants staff that deals every day with the airport involved. It is very convenient for them to sign off on the money to be passed on to the airport for terminal development. But it does not involve safety. It also does not distract us in any way that I can find from safety. But it could be relocated. But it would not do anything for safety.

The final item that you mentioned, Mr. Chairman, land acquisition for noise abatement, I would have to say that our noise abatement, land acquisition noise abatement, also probably does not have much to do with safety, although sometimes the area is used for runway extensions later on, and that clearly has a safety implication.

Once again, the existence of our staff out there, dealing on a daily basis with the airport sponsor, has made it administratively convenient for us to handle what is a fairly routine process. Of course, the airport buys the land. Our role in that case is minimal.

But the reason it came to us first is part of the noise suppression and environmental program which, when the Congress established, clearly recognized the safety implications of the overall environmental program. It involves redesign of aircraft engines and air frames for a noise suppression point of view, and it involves flight patterns of aircraft. Both of those are critically related to safety, and were put into the FAA rather than EPA, specifically because of our preeminent concern for safety. So it happens to be part of that program; that is why it is there.

Mr. **Anderson**. Would it be desirable for the FAA to regulate the air traffic control system and let another entity, such as DOT or an independent government corporation, operate the system? Isn't this the approach followed for pilots, where the FAA regulates the pilot, but pilots who are not FAA employees do the actual flying?

Mr. **Bond**. I am not exactly sure what the question would imply, Mr. Chairman. Let me try and answer it this way. In my opinion and in the opinion of all of us in the FAA, there is no separation between the air traffic control responsibilities and our safety regulatory responsibilities. The two deal together every day. They are inextricably intertwined. They cannot be successfully separated. I believe that safety will suffer if we do that.

Mr. ANDERSON. The GAO report suggests that FAA is doing little in the way of planning and setting priorities for safety programs. Your testimony suggests that you have taken some steps to improve your performance in this area. I would appreciate a brief summary of these efforts.

Mr. BOND. Well, Mr. Chairman, I have considerable difficulties, not only in this report but others, with the approach to life that the General Accounting Office often takes.

I testified before Congressman Harris' joint committee a few months ago that in my opinion, the perfect world of the General Accounting Office, in that perfect world, Federal agencies would create a perfect audit trail and have no product at the end of their program.

Therefore, I believe that the GAO report is long on process and long on systemization and long on paperwork, and provides an inadequate evaluation of the product and the success at the end of that process. If the GAO's approach to life is correct, then New York City would be solvent today, because that is the kind of management philosophy that the Rand Corp. applied, under Mayor Lindsay, to the city of New York, and it has not worked. Prudence, simplicity of structures, minimalist approach, promptness are the management guides that I believe successful organization should have, and not too much structure and too much process.

Now, my efforts in the safety regulatory field follow that guide, to which I am fully committed. It is true that the FAA has a difficult computer data base for safety information, for example. The management and identification of safety hazards is one of the problems that the GAO correctly identified. We have launched a large program under the leadership of the Transportation Systems Center in Cambridge, Mass., working with us, to rationalize this data base, put it together on a common footing, make it more accessible to our regulatory folk, and provide for an earlier and better identification of safety hazards.

We are into that process, began it right after the major reorganization of our regulatory structure and before outside commentary, in my opinion, identified that as a major problem. We were onto it early, and before the GAO. It will lead, in a period of 3 to 5 years, to a complete restructured safety hazard identification program. That process was also looked at by the Blue Ribbon Panel which, I think it is fair to say, approved of the process but felt we could do it more quickly than 3 to 5 years, and we are reviewing that time schedule also from the point of view of speeding it up. So that deals with the question of safety hazard identification. I am very much in favor of it.

Now let me touch on the question of prioritization of safety regulatory responsibility. I think that is where I fall most apart from the GAO report.

We have periodic meetings amongst the leadership of our regulatory group, myself, and other elements of the FAA, to discuss the regulatory program. It is not paper-oriented. We talk about what appears to us to be the most important thing that we have going. We modify our program every 3 months or 2 months or 1 month, whenever we meet, and we drive forward on what we think is best. It is an informal process, but I believe that it is very good, and it is based on the experience, intuition, and calculations available at that point to the people who are doing it. We make it public.

About 2 or 3 years ago, I believe the President through Executive order required regulatory agencies to publish a regulatory agenda. We now do that every 6 months. We publish an agenda in all phases of the FAA, including safety regulatory, of what we are up to at the moment, when we expect to complete it, and of course, when each regulation comes out in draft form, how much it costs, its impact, and so on. We began that several years ago. Recently, we have added another management tool to our safety priority process, which is unique, I believe, to the FAA. We now publish what we call a monthly management report, which every 30 days republishes the status of our regulatory agenda and therefore provides even greater detail and even finer scheduling to what we are up to in all regulatory matters. That goes beyond the requirements of the Executive order, and incidentally, it changes from month to month, because sometimes, we fall behind on regulatory projects, sometimes we decide others are more important, and we shelve some, which has been cited in the GAO report as a criticism, which I do not understand, since it is usually done for good reasons rather than insufficient reasons. So we use that management tool in our regulatory process.

And the final item that I would point to amongst many is our strong emphasis, starting in March of 1979 on enforcement. That, we will continue to press. That package together, I believe, is unquestionably a significant step forward in safety regulation, and all of it is underway.

Thank you.

Mr. ANDERSON. I understand you are currently assessing the recommendations of the blue ribbon panel appointed by Secretary Goldschmidt, and that you will be making recommendations to the Secretary on the recommendations of that panel.

Without getting too specific, can you tell us whether you believe that the panel is generally on the right track, and whether you will be recommending changes to deal with the problems that they have found?

Mr. BOND. I am very impressed with the result of the blue ribbon panel's work. Let me tell you why, Mr. Chairman.

It seems to me that the members of the panel have significant professional qualifications. They are familiar with the technology with which the FAA must deal, and all of the members also have managerial experience as heads of production-type units and regulatory units, which is what the FAA has. They have seen this problem, it seems to me, perhaps for the first time, from the perspective of someone who must run the agency.

It is significant to note what they have not recommended. They have not recommended that the FAA's legal structure be shuffled around in any noticeable way. They do not believe, correctly, that some kind of restructuring of the agency or some kind of legislative act is necessarily going to make us do our job better.

Instead, they have focused on management improvements within the FAA. I firmly believe—firmly believe—that they are correct. They have characterized our agency as a second generation regulatory agency, one that has gotten old, and which I hope is on the upswing again. I believe that is the correct characterization of the FAA's problems as well as its considerable strength.

So I am all in favor of the blue ribbon panel's report, both for what it does not do, as well as for what it recommends. Specifically, I believe that we have either begun the implementation before the committee's report was delivered, on many parts of what they suggest, or we will be able to adopt them.

Mr. ANDERSON. Mr. Snyder?

Mr. SNYDER. Thank you, Mr. Chairman.

In your preliminary remarks, you observed that you are safer on a scheduled airline than being in bed. Do you have some particular peril in bed? [Laughter.]

Mr. BOND. Congressman, in light of the fact that my mother is present in the room here today, I will pass that question.

Mr. SNYDER. She might be proud of you.

Mr. BOND. You must be referring to what is often described as what happens to me when I come before the Congress.

Mr. SNYDER. I will give you one. [Laughter.]

I have noticed on your several appearances here, Mr. Bond, that you have been accompanied here before by Mr. Onstad, your General Counsel.

I would like to ask Mr. Allison, what prompts your appearance here today?

Mr. ALLISON. Well, Congressman, I am a recently-confirmed appointee, and I had not had the chance to come before a congressional committee, so Langhorne offered to bring me along.

It also seemed relevant that many of the bills that are before the Committee today propose restructuring of the Department and one of its significant parts, the FAA. Some of the bills contemplate moving parts of what is now in the FAA into the Office of the Secretary, and other issues surrounding the Department outside of the FAA arise in the context of a number of these pieces of legislation.

So I am here to answer whatever questions you may have.

Mr. SNYDER. You are the General Counsel for the Department of Transportation for the record, is that not correct?

Mr. ALLISON. That is correct.

Mr. SNYDER. And you are Mr. Goldschmidt's General Counsel, so to speak?

Mr. ALLISON. Precisely.

Mr. SNYDER. Do you come from his law firm out in California?

Mr. ALLISON. No. He is from Oregon and not from a law firm.

Mr. SNYDER. I see. Do you have some aviation background?

Mr. ALLISON. Some. When I was in private practice, I worked in aviation.

Mr. SNYDER. So your basic appearance here today is to see that nothing happens to the structure.

Mr. ALLISON. No, sir.

Mr. Snyder. I have always assumed, Mr. Bond, that they had a tag on you when you came down here to see what you said, but I have never seen him so visible before.

Mr. Bond. Well, the Secretary could have come.

Mr. Snyder. Well, he sent his right-hand man. And I think maybe that some of these questions are a little bit difficult to expect you to respond to. I have a question here that, while you do not favor taking the FAA out from under DOT and making it an independent agency, where your full expertise can be in evidence—don't you think you would be less constrained in speaking out on the issues than you are now? How can I ask that and expect a direct response from you?

Mr. Bond. Just a minute, Congressman. I will check with Tom—

Mr. Snyder. That is what I mean. [Laughter.]

Mr. Bond. It is OK. No; I would be able to say whatever I would like to.

Mr. Snyder. I know you are under those constraints all the time. I think any agency—and not just you, and that is certainly no personal reflection on you—you have perhaps been a little bit more independent as being under another agency, or under their thumb, so to speak, than perhaps other people have been or would be, for which I commend you. But you indicated, too, that you have to submit major regulations to DOT under Secretary Adams' order, if that is proper terminology, and you get sometimes 60 days' delay in getting those back.

Mr. Bond. Yes, that is correct. But I do want to say that I think they get better when they go through that process.

Mr. Snyder. Well, I think you have got to say that, with Tom here.

Mr. Allison. Yes, he does. Good answer. [Laughter.]

Mr. Bond. Our problem—I do not know how highly to value independence, to be serious. Jeeb Hallaby was the Administrator of the FAA when it was an independent agency, and the last act that Jeeb did before leaving the office was to write the President of the United States, then President Kennedy, and suggest that a Department of Transportation be established in which the FAA would be a component part. It was based on his experience that he ended up reporting to what was then called the Bureau of the Budget and not to the President, and it took him 6 weeks to see the President.

So what was independence can also be described as being adrift, and he did not like that. He suggested that the DOT be established, and he testified as a witness in favor of the establishment of the DOT when the bill came through the Congress in 1966, when I in fact worked on that bill.

I have been addressing this question of where these agencies should be for 15 years, professionally, and I may not be right, but my story has remained consistent for 15 years. I think the FAA should be a part of the Department of Transportation, and the structure that it finds itself in today is right.

Mr. Snyder. Can you give us some specific examples of progress made by DOT in integrating aviation with the other modes of transportation into the overall transportation system?

Mr. Bond. Well, I can give you at least two areas of overlap where I think a good deal of progress has been made and more

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needs to be made. One has to do with groundside integration of the system around airport terminals. Our responsibility really does end at the terminal, and the highway and mass transit integration of the system begins there. That is an operational problem, of course, and I think that the Department has worked well with local agencies to try to make that terrible, terrible problem work better. So that is one.

A second technical area——

Mr. SNYDER. Mr. Bond, I do not see where the operation of the FAA itself is concerned particularly—I mean, I can see where you are concerned—but where it falls within your purview to be worried about the ground access. The Federal Highway people and DOT have that responsibility, and I would think that that would be involved under them without any particular integration with the aircraft.

Mr. BOND. Well, as part of the ADAP Act, we are required to create airport master plans, which is for the totality of the airport, not only the way the runway works, but also the way the groundside access works. The safety and function come together at that point. And the airport master plans are funded by us, for example, and that is where they do come together.

Mr. ONSTAD. One example, Mr. Snyder, of a very real one is in Chicago, at O'Hare. If we have a three-landing/two-take-off pattern there, we can flood the groundside with so many people the terminal just coagulates. There is just no way of moving people through that. That is but one example.

The chairman has been through Los Angeles Airport, and we are really talking about capacity issues, which is part of the FAA's responsibility, as well. So that to integrate those two kinds of problems is exactly what we are talking about.

Mr. SNYDER. So one example of the benefit to being under DOT is that you can work more closely with them in the development of the ground access to and from the airport and development of the master plan in conjunction therewith.

Mr. ALLISON. That is right, Congressman. One example of a situation that both the Administrator and the Secretary recently addressed was in the policy statement on National and Dulles Airports. That is an area where, as a Department, we have decided to try and take actions to improve access to Dulles as part of a master plan involving the two airports.

Mr. BOND. I would like to point to another technical area, briefly. Our colleagues in the Coast Guard have responsibility, nationwide and around the world, from the American point of view, for marine navigation. We have the responsibility in the FAA for aerial navigation. And the national navigation plan is done through the coordination of the Secretary's office between the Coast Guard and the FAA, and issues of low frequency navigation, loran-C, for example, the new VLF systems which are picked up at ground level, as well as higher, all of those are part of a relatively well-integrated system of navigation that is done through the Department.

Mr. SNYDER. You have to be involved with the FCC in that, too, don't you?

Mr. BOND. Yes, sir, we are. The frequency allocation is the FCC.

Mr. **Snyder**. Do you have some particular problem in working with the FCC, an independent agency, in conjunction with getting the frequencies for these navigation aids?

Mr. **Onstad**. Yes, sir. I would like to give you one specific one. We have a big problem with cable TV right now. The problem is this. The approach of the FCC is that if something breaks, go in and enforce after it breaks.

What is happening in locations in the South and in the East is that the cable TV is breaking. The cable is sending up emissions into the air of radio waves, and they are blocking air-to-ground communications. We cannot get the FCC to stop that rulemaking. Air-to-ground communications are being blocked today because we do not have the ability to stop them.

Mr. **Snyder**. I have got the picture now. We can solve that problem by putting the FCC in the Department of Transportation. That is the same logical conclusion that would be reached as the reason for having FAA in DOT because of this ground transportation correlation. The Coast Guard is already in the Department of Transportation, and we can put FCC in there, and that will solve this problem.

I admit that there are some areas, like the ground transportation thing, which I think has some merit, and probably some R. & D. overflow, too, that you have better access to by being in DOT. But it strikes me on the face of it—and that is why I am trying to play devil's advocate on the thing—that there are more advantages to being an independent agency, even though you are under some restraints from saying so, Mr. Bond, if I may observe, there are more advantages to being an independent agency on the surface than there are in being under the thumb of DOT. You mentioned your budget constraints and the fact that you would have those same constraints whether or not under DOT. But am I not correct that your budget now has to go to DOT first, where it has to compete with other requirements or requests within that same Department for money within the confines of the DOT budget in total, and then goes to OMB. And if you were an independent agency, I assume you would go directly to OMB and would have the direct input and direct competition and could be there on the scene yourself, or whoever you have there fighting your budget battles, rather than trying to fight them within the Department of Transportation, and then somebody going up here and saying, "No, not this, because we have already resolved it within DOT." It seems to me you would have a better fight on your budget if you were able to go directly to OMB without having to worry about the competition for other demands within the Department.

Mr. **Bond**. Well, it is hard to speculate how that would operate. But when our budget goes to the OMB, the FAA and specifically, the Administrator, represents it at the level of the OMB. So I do not feel in any way fettered in our dealing with OMB either today. We talk to them all the time and deal with them.

Mr. **Snyder**. You do not feel fettered by them. Don't you have a terrible time getting these statements approved and getting them back down here in time to come up and testify?

Mr. **Bond**. Well——

Mr. Snyder. As a matter of fact, yes. I have heard that complaint from too many of these agencies. I know you are no different—plus the fact that you have to get your statement approved by both DOT and OMB.

Mr. Bond. Well, I just go ahead and say what I think, whether it is in the statement or not.

Mr. Snyder. I'll bet you do. [Laughter.]

Mr. Anderson. Mr. Levitas?

Mr. Levitas. Thank you, Mr. Chairman.

I appreciate your participation and attendance in this matter, Mr. Bond. Since we are dealing with the subject matter of human life, it is a serious matter, and I think we are all in this room concerned about it as a serious matter.

You stated that you do not agree with the GAO approach in general because it emphasizes management systems, management controls, a planning process, and you suggest that FAA be judged by the result of the process rather than what systems they have in place.

How many persons have perished in the last 10 years in survivable accidents as a result of post-crash fires, explosions, smoke inhalation, and toxic fumes?

Mr. Bond. Mr. Levitas, my understanding is that the Congress is interested in only the air carrier portion and not general aviation, to begin with. It is a separable issue, in any case.

My estimate would be that there are approximately 150 fatalities in the air carrier field on average per year; maybe as many as 200, and that a total of maybe 25 percent to one-third of those numbers, or 40 to 60 lives a year, are lost in what is classified as a survivable accident, one that is other than a catastrophic accident, in which we all agree there is no hope of survival.

We calculated in the hearings before this committee previously that if we were to invent a system to make a really enormous breakthrough in cabin safety that we might hope to save half of those lives. So therefore, there is a universe of maybe 15 to 25 lives per year that are at risk if we were able to solve the cabin safety problem entirely. That is out of a total of approximately 1,700 lives per year lost in civil aviation, and that compares to 4,500 motorcycle deaths and 50,000 deaths on the highway.

Mr. Levitas. Well, I am again disturbed by the attitude that says we are safer than motorcycles and bicycles and automobiles, rather than focusing on whether or not we are doing the best job possible.

But the information that I have is that in the last 10 years or so, there have been almost 1,200 people or more who have survived the crash only to perish in the environment of the aircraft as a result of lack of appropriate cabin safety or as a result of post-fire explosions. We have the example of the tragedy that occurred last night in Saudi Arabia, involving a fire in the cabin from which people could not escape; the Pan American, Pago Pago incident, in which I think 124 people perished; I forget the exact number at the New Hope, Ga., incident involving Southern Airlines, where most of the people perished in the aftermath of the crash and had survived it, and on and on and on.

Now, judging on results, what is the status and how long has it been in process for FAA to develop appropriate cabin safety regulations involving flammability, toxicity, smoke, fire, inerting of fuel, and the like? What is the status of that?

Mr. Bond. It is the subject of a continuing research and engineering program by the FAA. We testified, I believe, before Congressman Mineta's committee on this subject, I think this year. Certainly, I was a witness last year. We are in the middle of it, and I believe it is fair to say that every significant aspect of the cabin safety problem is under investigation and under work by the FAA.

Also, because of the high level of congressional and public concern for this aspect, we appointed sort of a blue ribbon committee, the SAFER Committee, to investigate the whole field of cabin safety and to produce for us and for the Congress suggestions for improvement that perhaps we had overlooked in our process. Maybe they can tell us how to do it better. Their report is not final yet, but my understanding is that this Public Works Committee is intending to hold hearings on the SAFER Committee report in the very near future.

Now, that is the status of where we are. But let me——

Mr. Levitas. Well, now, how long has this been going on? When were the last regulations issued relating to, say, flammability standards of materials?

Mr. Bond. I would have to check for the record, but our material test standards go back some time, I guess to the early 1970's. I would like to confirm that.

Mr. Levitas. I think that is approximately correct, maybe a little before that. And isn't it true that the proposed rulemaking with respect to more updated and modern standards has been in abeyance for almost a minimum of 10 years, and yet we have a third generation of aircraft now being developed in this country without the most modern standards?

Mr. Bond. That is a subject of debate. The whole field of cabin safety has been technically the most vexatious safety problem that I have encountered as Administrator. It is the one that has shown the least progress and the least evident solution. Everything else that I have dealt with here and that our agency has dealt with—collision avoidance, performance of wheels and tires, stall avoidance, certification, ozone problem in the cabin, all clearly have a solution, and we are working, I think, at a good pace toward them, or have overcome them. But cabin safety has had no breakthrough. And I do not know, I cannot tell this committee, where the major breakthrough exists. The case of materials in the cabin is what you have alluded to in the case of flammability.

We developed a standard in the early 1970's that is now followed in cabin interior materials, and it deals only with material flammability. At the time that that standard was introduced, it was thought that it was a good beginning. In the words, of the Associate Administrator for Safety, Oscar Bakke, I believe he said, "Well, it is a good place to start."

But there are other aspects of materials as well, as we have learned since then, not only flammability, but smoke generation, and the third is toxicity, poison gases. And we have tested what we consider to be the whole universe of materials that could be used for the interior of an airplane, and we have yet to find a material that is not either flammable or which produces smoke or which produces toxic gases at some temperature range that would be lethal to the passenger onboard, one of those three ways, and the temperature which would be encountered in the cabin.

So we do not know what standard to set for that material that would not have some problem with it. We have not discovered it yet, and we continue to search through materials and try to develop it.

So that is our dilemma with materials.

Mr. LEVITAS. I understand the chairman wants to recess at this point, and I have some further questions. I will, before we leave this point, just make the observation that the industry has testified before this committee and the Oversight Committee that they are producing and capable of providing materials far in excess of the present standard that FAA has provided, and I have often wondered why is FAA designing behind the state of the art rather than challenging the state of the art.

You might want to respond to that when we come back.

Mr. BOND. All right, sir, fine.

Mr. ANDERSON. I would prefer that we recess now. We will come right back in about 10 minutes and try to complete your presentation.

We will stand in recess at this time for about 10 or 15 minutes.

[Short recess.]

Mr. ANDERSON. The meeting of the subcommittee will come to order.

When we recessed, Mr. Levitas was right in the middle of asking a question, or was Mr. Bond in the middle of answering one?

Mr. LEVITAS. I believe Mr. Bond was about to respond to my last question.

Mr. ANDERSON. Mr. Bond, the floor is yours, then, in response to that question. Do you wish the question restated?

Mr. BOND. I am sorry. Would you mind restating the question?

Mr. LEVITAS. I would be happy to. I said the committee has received testimony that the industry, the air frame industry, has developed materials and fabrics which far exceed the standards and regulations which FAA requires, and that it is generally my sense of FAA regulations in this safety area that FAA regulates either at or behind the state of the art. And I am asking why is that, rather than challenging the industry to move forward.

The way we made great progress in this country in cleaning up the rivers and streams, through environmental controls, or reducing the problem of air pollution through environmental improvement, was for Congress and the agencies of government to challenge the industry to move up to a greater level of performance. Yet, in the case of FAA, you are at or behind the state of the art.

Mr. BOND. OK. On the assumption that the last element of your question was generic and FAA-wide, rather than related to the specifics of this material question, the answer is no; we do regulate when we feel appropriate to be out ahead of the existing state of the art. The best example that I can give for that is our environmental regulations, where we have set noise standards, most recently for helicopters and then for jet engines, where we have required noise levels that were substantially above the existing state of the art, and the industry has met that.

Mr. **Levitas.** I had said in the safety area.

Mr. **Bond.** Well, all right. Let me give you the case of aircraft simulation, for example. We have set standards for reality and reproduction of reality in aircraft training simulators that are well ahead of what was then available, and with incentives as well for those who buy those simulators to use them instead of expensive flight.

I am sure we can provide other examples as well, but the point is, I think that in many, many cases, the FAA does that, exactly—though we do not do it in all cases. We try to get the very best of what is available in other cases.

Turning to the question of interior materials, there is a basic factual difference of opinion between ourselves and the folks who say that better stuff is available. There should be a resolution to this debate. Those who say that something better than what we have specified is available—our research does not indicate that that is the case. But we will investigate that, and we will find an answer to it, and if we are wrong, we will adopt it.

Mr. **Levitas.** Before I leave this particular area, I would just like to make a few observations and ask one or two questions about the SAFER Committee and the work it has done or not done.

It is my sense that the SAFER Committee came about as a delaying means to avoid the implementation of regulations in the cabin safety area. These regulations, proposed regulations, had been pending for a long time. There were no hearings. There was an oversight hearing of this committee. FAA held, I think, 1 or 2 days of hearings, and then, instead of going forward with the proposed rulemaking, abandoned the rulemaking and set up an outside group called SAFER to get involved in this area.

It is my belief that the genesis of the idea of SAFER came from the industry to FAA as a delaying means and is an example, in my judgment, of how the industry has had undue influence on FAA in postponing regulations that they were not interested in seeing promulgated.

Now, in addition to that, the SAFER committee which took forever to get appointed—you remember our dialog about that—when it finally got appointed, with this tremendous hope and optimistic view which you expressed as to the outcome of SAFER, the proposals that I have heard them talk about, both as interim and final proposals, are so miniscule as to almost be insignificant. What is your sense of that? Why don't you describe some of the proposals that you have heard they are talking about.

Mr. **Bond.** I met with the SAFER Committee some months ago, before the final delivery—they have not delivered their final report, is my understanding, upon which you are going to hold a hearing.

Generally, it seemed to me that the SAFER Committee's recommendation was that the FAA is doing about all that can be done. The deficiency, therefore, in the eye of some beholders, is that the SAFER Committee has confirmed the judgment of the FAA. That was not our purpose, however. Our purpose was to bring a separate and independent view on what we are up to.

Now, I would like to pose a question of my own. In light of the fact that in many, many areas, simulation, flight time—duty time regulations, the standards for the strength of wheels and tires on aircraft, which we have significantly upgraded and to which there is a significant cost, I would like to pose this question. Why, uniquely in the field of cabin safety would we try to suppress a good rule if it existed in the teeth of industry opposition? We have not done so in other areas, and why in the world should we do so in the field of cabin safety?

So I think the answer to your suggestion is not that we are trying to do it because the industry does not approve, but because we do not know, and therefore, there exists no superior rule.

Mr. LEVITAS. Well, I simply will say to you that there has been testimony before the Oversight Committee of Public Works and Transportation that the industry was opposed to going forward with the proposed rulemaking and that it was industry representatives, in ex parte conversations with FAA, that brought about the proposal of the SAFER Committee. I just think we all have to make our own judgments in that regard.

But let me move into another area. You are opposed to the GAO concept that there should be a prioritization of regulatory processes along the lines they have suggested, and while you are beginning to do some work in identifying safety hazards in advance, that still has not come on place; but you prefer a more informal process, as I understand it, which seems to me pretty much like letting a pilot take off in a plane without filing a flight plan. And it seems to me there is the analogy.

But what is the current list—do you have with you today the current list of your priority regulations now pending?

Mr. BOND. We can provide you one. It is published, as I mentioned earlier, now monthly, in the FAA's monthly management report, and in fact, in that document which we have ginned up in the last 6 months. Also, all relevant information that the FAA can think of has been thrown into it—the funding balances, the status of equipment purchases, everything. And we have submitted it to the staff of the Committee as well as to industry observers for suggestions on what we should put more in; every 30 days it is all made public.

Mr. LEVITAS. Do you have a copy of that?

Mr. BOND. I do not have one now, but we will be happy to provide you with the most recent version.

[The U.S. DOT, FAA Monthly Management Report, data period ending July 31, 1980, was received and retained in the subcommittee file.]

Mr. LEVITAS. All right. Let me turn to the concept of the legislation that is being discussed today. And let me start off by saying that there is one thing that you and I agree on, and I so stated at the outset of the hearing this morning, that I do not believe for a minute that the three bills that we are talking about, or any combination or variety of them, or any restructuring of FAA, will solve all the problems that I perceive at FAA by any means, and I have not suggested that, nor do I. I think the problems at FAA go far, far deeper than that and involve such things as what the GAO identified as a lack of appropriate management procedures within FAA, to name one.

But let me ask you this. You identified for the chairman, I believe, some areas that are not safety related at FAA. I think the loan purchase guarantee program was one. What about the war risk insurance program? Isn't that administered by FAA?

Mr. **Onstad**. Yes, we have the war risk insurance program.

Mr. **Levitas**. The emergency preparedness program?

Mr. **Onstad**. It does not even take a man-year per year, but we have it.

Mr. **Levitas**. The emergency preparedness programs?

Mr. **Bond**. Well, wait a minute. The emergency preparedness program for our agency has to do with what we would do in the case of military attack on the United States, if that is what you are talking about.

Mr. **Levitas**. I am referring to Executive Orders 11161, 11382, and 11490.

Mr. **Bond**. I would like to respond specifically, but we——

Mr. **Levitas**. Would you respond in writing on that?

Mr. **Bond**. Indeed so.

[The following was received for the record:]

[FAA Submission]

The FAA's emergency preparedness program, pursuant to Executive orders 11161, 11382, and 11490 establishes procedures for the FAA to follow in the event of war or a national emergency. Central to the program is coordination with the Department of Defense (DOD) including provisions for the FAA to become an adjunct to DOD, subject to the orders of the Secretary of Defense, under certain circumstances. This program is necessary for the orderly transition of FAA functions to provide for the safe movement of aircraft consistent with our national security needs.

Mr. **Levitas**. What about the operation, maintenance, construction, and development of Washington National Airport and Dulles International Airport?

Mr. **Bond**. Well, like all else that we do, that involves some safety aspects of it, obviously.

Mr. **Levitas**. Well, that is true with any airport in the United States.

Mr. **Bond**. So it is. In my judgment, the airports could be located in some other Federal agency. The dilemma has been, of course, that the Congress prefers to keep it in the executive branch in order to retain a good deal of control over it.

Mr. **Levitas**. Not enough, I think.

Mr. **Bond**. Well, I would like to introduce you to the folks who believe that there is too much, and I find myself in the middle.

Mr. **Levitas**. I understand. I have a list here, which I will at some point go over with you and your staff of a whole list of functions which my staff has identified as being nonsafety functions, and they include many of those which have already been discussed.

How frequently do you meet, and how much discussion do you have with the Secretary of Transportation, either the present one or the previous one, on aviation safety matters?

Mr. **Bond**. I have not ever made a calculation of that. I can suggest that I meet with the Secretary once or twice a week on a variety of subjects.

Mr. **Levitas**. What about safety matters?

Mr. BOND. Well, I guess it is awful hard to sort it out. Let me suggest to you that both Secretaries that I have known have observed the strictest delegation of safety regulatory decision to me. They have said it time and again, "I do not want to get into it. It is a decision that you should make on the merits." And they have left that matter to me.

I deal more frequently with the Secretary on budget and financial matters which, as we have touched on before, goes through the Secretary to the OMB and also on what I would call general administrative matters, personnel things, that kind of stuff, quite a lot on that.

Mr. LEVITAS. Well, that, I think, is part of the problem. Not only is the Secretary—this Secretary and presumably his predecessors, in my judgment—not really involved in safety matters to any significant extent, but they are involved in budget matters.

Mr. BOND. Yes, sir.

Mr. LEVITAS. And you said earlier that budget—I think your words were that sufficient money for aviation safety is one of the problems that you encounter.

Mr. BOND. Right.

Mr. LEVITAS. And I suggest that one of the constraints that you have got is that the Secretary of Transportation has a higher responsibility, from his vantage point, of balancing the budget, rather than dealing with the types of safety issues we are talking about—or else, why do we have a $2.5 plus billion surplus in the ADAP fund, instead of providing the navigational aids and the other facilities that would improve aviation safety? It seems to me that that is where the Secretary comes in, to help that budget get balanced through the ADAP user tax.

Mr. BOND. The Secretary has an interest and responsibility for balancing the budget. The language of that act applies to him. It also applies to the FAA. It also applies to the OMB. All of the participants in the executive branch fall under the conflicting requirements of promoting aviation safety and investment and in trying to share the larger national goal of balancing the budget and controlling Federal expenditures. I do not feel that the Secretary is excessively preoccupied with that, not to the detriment of aviation safety, but it is a matter of consideration for him.

Mr. LEVITAS. I am not going to pursue that. I suspect that Mr. Goldwater, who I see here today, will go into that in much more detail. But we are talking about user taxes which were specifically paid by users for a particular purpose, and they are sitting over there in surplus to help balance the budget.

Mr. BOND. Do you mind if I answer the other part of your question? You asked first what the Secretary's interest was in this matter, and I tried to answer that. Then you asked why is there a surplus in the trust fund. The answer to the latter one is easier to state.

The aviation trust fund and the revenue stream that was associated with it were established initially for a series of purposes. First and preeminently was the funding of safety and capacity improvements in our system—runways and nav aids and also research. After that need was met each year, the act specifically provided that revenues that went beyond that necessity be used to pay the operating expenses of the air traffic control system, as is done, for example, in the highway program. The Congress, through what I believe to be a serious misjudgment on the part of the executive branch in the early 1970's, barred significant expenditures for operating costs of the air traffic control system. So, since the outgo, the expenditure stream of the ADAP act was limited only to safety improvements, and the Congress knocked out the operating costs of this system, the money has piled up in the trust fund, unspent. And I believe that is the primary reason for the surplus.

Mr. LEVITAS. Well, that, I think, is based on a false assumption, and the false assumption is that all the needs in the navigational aid field and air control and landing control have been provided. I do not want to belabor the point, but how many commercial airports in this country do not even have power, or do not have radar, and how many airports do not have ILS's? So we have not met all the needs by any means. How many runways do not have VASI on them today?

Mr. BOND. I would like to submit all of those answers for the record. We are approaching 800 ILS's in the United States, 250 radar coverage, but that is not the center of your question, I think. It is that you need more, and I agree with that, and we are providing that at the rate of, this coming year, close to $400 million per year more.

[The following was received for the record:]

[FAA SUBMISSION]

NUMBER OF CERTIFICATED AIRPORTS LACKING CERTAIN FACILITIES AND EQUIPMENT

The 222 Certificated Airports have no ILS; 205 Certificated Airports do not have Radar; 676 out of 1422 Runways do not have VASI; All Commercial Airports have Power; 371 Certificated Airports have no Tower.

Mr. ONSTAD. Mr. Levitas, I know you are interested in the totality of this problem. There is one aspect I would like to bring to your attention, and that occurred in the most recent budget fight when the House and Senate conferees got together. You asked what is the benefit of the Secretary's office. Well, we got involved in a situation where we are in the transportation function account, and the net effect of the way in which the Senate Budget Committee proposed to cut our programs, we were reduced $350 million. And I can say to you personally that it was most helpful to have the Secretary's office, as long as we are in the transportation function account, to give assistance in dealing with that kind of a problem up on Capitol Hill.

Mr. LEVITAS. What do you think, Mr. Bond, about the amendment which I offered and was accepted by this committee in the ADAP bill, that requires FAA to submit its budget simultaneously to the Congress, rather than having it filter through DOT and OMB? You said you speak frankly when it is not in prepared text.

Mr. BOND. Well, I had not remembered the amendment. I do now. I think that it would probably make very little difference, although as a matter of procedure, I think the administration's policy would be to oppose that.

Now let me tell you why I think it would make little difference. First of all, it is already available. We tell the Congress what level of request we make to the Secretary's office, and that is available each year. So it would make it available earlier, I suppose, to the Congress, but it would make no other difference.

There is a more significant aspect of this, however, and it has to do with the reality of politics in the United States, and especially the seeking of Federal funds. It has been my observation that an enormous amount of legislative attention and effort is paid to regulatory issues, both by the committee members and by the lobbyists. Relatively less attention is paid, where it really counts, to the funding of the safety account of the FAA.

I have been now through four cycles of the Appropriations Committee, and there has been almost no effort made either by other Members of Congress, other than those on the Appropriations Committee, or by the various lobbies, to get more money in toto—not for specific projects in my district or somebody else's, but in toto—for appropriations raising the FAA's research or F and E accounts, as a result of which they stay at the level which has been suggested by the administration. It is the one area, in fact, of the DOT's budget which receives very little congressional interest when the real rubber meets the road, when the decisions are made on financial allocations.

It is in contrast, for example, to the airports program, where hometown airport projects of various individual Members of Congress are important and where $75 or $100 million are individually added each year, and it is very much in contrast to the interest that the Congressmen show for highway projects and mass transit projects, and that goes up. So it suffers from neglect.

Mr. **Levitas.** I think you probably would want to revise your area of concern to include this committee as well, seeing as how this committee accepted another amendment which I offered at the last markup on ADAP, which would require 20 percent of the total authorized for F and E to be put in navigational aids at airports which now lack them. And this committee has taken a very strong position, it seems to me, on that.

But let me move on to my last question. Granted that you do not agree with the GAO report; there are others of us who take a different view of it and think it is a very much ontarget description of some of the problems at FAA.

I know that you do not believe that FAA is doing as good a job as it could do in dealing with aviation safety——

Mr. **Bond.** That is true, sir.

Mr. **Levitas.** I know that. You responded to my question at the last hearing along those lines. So, other than the point you have already referred to about getting more money, which I have already addressed as well, what other areas do you think FAA could deal with, what other improvements could be made, what other approaches could be taken, that would improve aviation safety and, for example, reduce the unnecessary deaths in survivable accidents?

Mr. **Bond.** My problem with the GAO report is not that they have failed to identify difficulties in our regulatory process. I think that does not take too long to do. My difficulty has come with the solution which they have proposed as process. They have identified some problems, however, and they are right in the identification of the problems.

For example, one of the comments that was in there was that our people who are in our regulatory process are not analytically oriented. That is a legitimate complaint. Our difficulty over the years has been of our own making. As I said before this committee, in sum, we should do our job better.

We have a great many folks who are superior pilots, for example, who have been placed in regulatory positions in the FAA which require a special legalistic and analytical skill which they are not so well suited for. They are good at their trade, but it does not—the trade in this particular job does not happen to be piloting. That is a dilemma that almost every aviation institution that I know of is, at one time or another prey to: good pilot, bad manager.

So our ability to write a comprehensive rule, fight our way through the bureaucratic regulations, do an intelligent cost-benefit analysis and get the rule launched and out into the world and legally sustainable to a challenge has been very difficult.

It is a management problem. It is not a problem that I can think, really, that a change in the law would help much. It is our own fault, and not additional process. The GAO report really does not touch on that, though the Blue Ribbon report does. It is more specific as to our difficulties, and it views it from a management perspective.

I believe that we have made very significant progress in the FAA in bringing in more analytically oriented people in the last 3 years to our regulatory area. A great many of the folks were good, loyal Americans, hard workers, and have retired from the FAA. They were toward the end of their career, and I believe there is a new generation of people coming along who will do a better regulatory, though not piloting job, for us.

The world has changed for this agency and for other Government agencies. It is really tough to do business now. We cannot just throw a rule out on the street today and not justify it. It will be subject to legal challenge. The whole quality of the work is different today. We must overcome that and move into the 20th century, and I know for my ownself that we have made great strides. We are about two-thirds of the way there. But we need more time.

So I would say in sum, what we need to do is more of what we are up to now—simplifying structures, finding the best people with the best education, the best analytical approach, and putting them to work on the projects. We will overcome our difficulties if we are permitted to continue that trend. So that is the first thing that I think we need.

The second, we touched on and I will not dwell on, and that is money. That is clearly something that the Congress can provide, and it would be useful. But it has to be subject to other national priorities.

I would like to see the Congress consider further amendments to the civil service system in general to permit management greater flexibility in the handing out of punishment for nonachievement to our subordinates, and also I would like to see our ability to reward people who do extraordinarily good jobs improved. We can do neither of those today.

The result with our agency and with NASA and with the Defense Department and with all other Federal agencies is that there is a kind of a middle level of quality as an institution—many outstanding people. But people are not motivated in the Federal system to do exceptional work that is the case in great universities or in great corporations. And so long as there are penalties imposed for really outstanding work, acting odd in a Federal bureaucracy is not well received. So I would like that kind of a reform to be placed in the management process. I would like to be able to give people more money when they move to a high-cost-of-living area, for example. We have been dealing with a very difficult problem in the O'Hare tower, near Mr. Fary's home district. We have had a controller's slowdown there over the weekend, and it primarily has its roots in the fact that it is a high-cost-of-living area, and the controllers want to get out of Chicago as quick as they can and go someplace else. I am not sympathetic to the slowdown, but I wish that our people could be paid more money when they live in a high cost of living area.

It results in the fact that not only our controllers, but our FAA employees everywhere, all want to go to where the living is cheap and the weather is good, and that means Phoenix down to Florida, the Sun Belt, in short, and it does not include Los Angeles, which is a very fine place to live, but which is very, very expensive. Our people who move from anyplace to LA will suffer a 10 to 25 percent reduction in their standard of living just because of the staggering cost of housing. A private corporation can cure that. The Government cannot do that at all, and it is a terrible burden for us to deal with. So I would like to see that changed.

I would like to see the Federal procurement regulations simplified so that the agency in its wisdom can take less than 5 years to buy a piece of equipment and not have so many legal challenges to the steps that we take. I would like to see that happen.

I would like to see simplification of the Administrative Procedures Act, perhaps—I am less certain about that one. But it takes time to stretch it out.

All of the things that I have listed in my statement, Mr. Levitas, are burdens to all Federal managers. And so long as the Congress imposes these burdens on all Federal agencies, they are going to get from the Federal agencies that they create less than extraordinary and exceptional performance.

Mr. LEVITAS. I thank you, Mr. Bond. I personally believe that the problems of FAA are deeper and in some ways different from some of the general malaise of the bureaucracy, and having this very grave responsibility for protecting human life, I would like to see some changes. I would like to see the agency become anticipatory and preactive, rather than reactive. The bottom line, as I see it, is that along with GAO, I do not believe the agency has adequately marshaled its forces to deal with safety problems quickly and effectively. And I think it is going to take more than just expanding the senior executive service and reforming the civil service law, both of which probably should be done. But I think it is going to require perhaps a restructuring of FAA, perhaps an imposition of new management procedures and techniques. But I think the job is important enough that you and the Congress need to be dealing with it seriously and not defensively.

Thank you, Mr. Chairman.

Mr. ANDERSON. Mr. Goldwater?

Mr. GOLDWATER. Mr. Bond, I am often amazed at how good-natured you are and how personable you are when you come before this committee. I say that in amazement, because of the mere fact that you have to struggle valiantly under the dictatorship of the Secretary of Transportation. You have to put up with the microscopic scrutiny of the flying public, the manufacturers and the users, and sometimes the obnoxious nitpicking of the Congress. I compliment you for the job that you have tried to do, and I will say sincerely that I think you are trying to make an honest effort to do a good job with the FAA.

Obviously, you appear here today in an objective mood, even though you have pride of authorship in the creation of this monstrosity called the Department of Transportation, and the mere fact that you are the Administrator of the FAA. Is that an honest evaluation of your mood today?

Mr. BOND. Well, my mood is objective, I would think. I have been on both sides of the debate, Mr. Goldwater. I served as an aide to the Secretary, and that brings one perspective to the matter. I have served as a line administrator now, as head of the FAA, and that brings a different angle. And when I was in State government in Illinois, I served as secretary of an agency that I patterned after the U.S. Department of Transportation, with operating modes and the secretarial staff at the top. So I created a mirror image of the U.S. DOT, and I still like the structure.

So I may be wrong, but at least I have been consistent over the years.

Mr. GOLDWATER. I have often wondered what the rationale was for the creation of the Department of Transportation. We did this in California, and I have watched the aviation department become completely buried and somewhat ineffective, if not totally invisible, compared to the way it used to be. It was separate, it spoke for itself, and consequently, it took on the administration when it felt they were wrong, and they operated independently, looking out for the best interests of aviation. It is now buried. I find the same kind of situation occurring here at the Federal level, where the objectives of the FAA are often compromised because of the higher objective of the agency to which you must account.

Two-thirds of the Department of Transportation's budget is the FAA; two-thirds of its manpower is FAA. I see no relationship to flying or any other mode of transportation, to be honest with you, and I think it would be very hard to find someone in the FAA who has to talk to NHTSA, the safety organization, or the Coast Guard, or the railroad people, or the St. Lawrence Seaway, or even UMTA. I do not see the relationship that you seem to place such great emphasis on. And in fact, as I recall in my conversations with them, the last three Administrators of the FAA all expressed the view that they felt the FAA could function better as a separate agency.

What is the rationale for all of this, and why are you so defensive about keeping it the way it is?

Mr. BOND. Well, I guess you could go back to Mr. Snyder's characterization of the previous Administrators; they were wrong.

Mr. Goldwater. That is a very simplistic answer to a very serious question.

Mr. Bond. Well, in addition to the fact that I have had no difficulties operating within this structure, other than the financial one, which I believe applies everywhere in the executive branch, there is another aspect of simplification of organizational structures, as well. It has to do with the ability of the President to run the executive branch. If every program in the executive branch had its own independent agency running it, the President would have a span of control that would be 1,100 or 500 agencies wide, there would be no hope of running it at all, and it would become unmanageable.

So, placing the FAA and the highway program and the mass transit program and the Coast Guard and so on under a single, Cabinet-level Secretary of Transportation means that the Secretary can preoccupy himself with the daily administration of the program and that the President can deal primarily with the Secretary. Otherwise, the Government would become unmanageable and leadership would be weakened.

I believe that there is some analog in that threat to what has happened to the Congress as a result of congressional reform. There are now, I am told—Speaker O'Neill said—150 subcommittees of the House, and leadership has become weakened, central leadership has become weakened as a result of that, and in our case, we see seven subcommittees of the House. This subcommittee here is the primary authorizing subcommittee for the FAA, and there is a parallel for the other parts of the DOT. But there are six others that hold hearings all the time on the subject of aviation safety. We went to 41 hearings in 1979, 41, a large preoccupation of time, and I think that from the national point of view, going back to the executive branch, not having an enormous proliferation of independent agencies reporting to the President is very much in the public interest.

Mr. Goldwater. Well, granted, and I think that your comments are probably accurate in regard to the Congress. But that in itself is not reason to justify maintaining the status quo at the Department of Transportation in lieu of the fact that so much of the activity is strictly FAA—the budget, personnel, some 50,000 people. I mean, you are not just a small fly speck in the realm of Federal agencies. You are a big agency, you have a big function, and you have an important function.

Mr. Bond. Indeed, we do.

Mr. Goldwater. And so often, you come before this committee, compromising something, or at least not to my satisfaction not defending or supporting or fighting for aviation solutions or solutions to aviation problems, because you are constrained by the Secretary or by a higher policy. It just seems to me that you could function more effectively without having to put up with the upper levels of bureaucracy.

Mr. Bond. The FAA was an independent agency from 1958 until 1967, April 1, 1967, when the DOT came into being as a matter of statute. During that period of time, I think it is clear that the regulatory responsibilities of the Agency were pretty well discharged, but the responsibility of the FAA to put new money into the air traffic control system during that period of time was poorly discharged. And when President Johnson's administration left office in early 1969, and I left the executive branch, one of the highest priorities for the new Secretary of Transportation, who was Secretary John Volpe, was to pass the ADAP Act, which created the funding flow for the safety system that exists today. The DOT was created about a year or two earlier than that. So, in effect, as soon as the FAA became part of the Department of Transportation, as a result of the Secretary's urging and congressional action, the ADAP program was passed that provided the funding flow that has gotten us to the very good, though not perfect, state that we are in today.

As an independent agency before the DOT was passed, the amount of money that went into the air traffic control system, my recollection is, was around $60 or $70 or $80 million per year, and it jumped immediately to $250 million. So I think that there is a single example of how the safety program has gotten better rather than worse under the DOT.

Mr. GOLDWATER. But not because of the DOT, either. It became that way because the idea was a sound one. And I am not sure that the Department of Transportation or the mere fact that you organized it had anything to do with that phenomena.

Mr. BOND. I cannot make that claim. It is certainly a chronological relationship. It is difficult to establish causality beyond that. But it certainly happened after it was done.

Mr. GOLDWATER. So you would agree, then, that really, you have no fundamental, or day to day—in fact, you would have a casual relationship with all these other modes of transportation. The fact that you might split off from the Department of Transportation is not going to be any great loss to these other modes of transportation and the so-called coordination of these modes; would you agree?

Mr. BOND. I think we would lose a great deal in many ways if we were made not to be a part of the Transportation Department, and I think that Jeeb Hallaby, the last Administrator, was correct in saying that it ought to be part of it. Here is the crux of it——

Mr. GOLDWATER. What would you lose, though?

Mr. BOND. According to Jeeb Hallaby—as a matter of fact, Bozo McKee, who succeeded him as Administrator and briefly served independently, and then under Allan Boyd, the new Secretary—being independent is a two-edged sword. You do not have anybody to tell you what to do each day—and as a matter of fact, we do not now, in the safety area—but you also often find yourself isolated. Independence and isolation are frequently very close, one to another.

If you are not part of the administration, with a champion at the Cabinet level, you can find yourself on your own, a long way from the center of the action. Clearly, that was what Jeeb Hallaby felt was the case.

Mr. GOLDWATER. But you in fact do not have any direct relationship with these other modes of transportation.

Mr. BOND. Well, each individual case needs an answer. In the case of the mass transit——

Mr. GOLDWATER. Well, take the St. Lawrence Seaway.

Mr. **Bond**. Nothing; nothing to do with the St. Lawrence Seaway.

Mr. **Goldwater**. What about the railroads?

Mr. **Bond**. We do not have very much to do with railroads. The Mass Transit Administration works with us, however, in more and more airports as part of the airport master planning process, which we fund, for public transportation access. The O'Hare median strip line, for example, which is going out there, is a rail system that is going to O'Hare Airport—bus service. Those terminal developments which we fund in a small way, alluded to together today, are of relevance to us and to UMTA.

In the case of the Coast Guard, we work very closely with the Coast Guard. The Coast Guard is a large operator of aircraft, for example, which we certificate.

Mr. **Goldwater**. I know. They fly your people around.

Mr. **Bond**. No; we fly our own people around for the most part. The Coast Guard could do it well, also. But in the navigation field, we work very closely with the Coast Guard. Marine navigation and aerial navigation are electronic today, primarily, and they are closely related. We work very closely with those folks on that. The Federal Highway Administration is another area where we have good relations with our modal counterparts. Highway access to airports is very important as part of the planning process, the airport master plan.

Mr. **Goldwater**. Yes; but that could take place whether you were part of the DOT or not. Just like, you are not part of NASA, but you and NASA have a very good relationship; you and the Department of Defense have a very close relationship.

Mr. **Bond**. So, indeed, we do.

Mr. **Goldwater**. So you are not part of them, and you function quite well without being under their umbrella; correct?

Mr. **Bond**. Well, we certainly have very good relations with NASA and the Department of Defense; that is true.

Mr. **Goldwater**. You could have the same kind of relationship with UMTA or the Highway Administration if, in fact, you were separated. Part of your defense in maintaining this umbrella situation, is that somehow, there is something served by having all these modes together, something called an integrated transportation system. In fact, nothing is served by it. The St. Lawrence Seaway has relatively little to do with the highways, the railroads; they all operate and function on their own. It is not that the parties do not talk to each other; they certainly do, and in some instances, they cooperate with each other, and there are interagency meetings and what-have-you. But that occurs all through Government.

I think the only reason that you have been able to cite to us for this arrangement is visibility in the Administration, and perhaps in the Congress.

Mr. **Bond**. I think we would achieve visibility in the Congress, regardless of location.

Mr. **Goldwater**. I think you would, too.

Mr. **Bond**. I have not noticed any lack of that.

Mr. **Goldwater**. Mr. Chairman, I introduced this bill several years ago to separate the FAA from the Department of Transportation. I introduced it, actually, prior to Mr. Bond being in Washington, D.C., and I did it based on my observation of the last three Administrators and the Secretaries of the Department of Transportation, and the problems that they had. Now, fortunately, Mr. Bond has a better relationship than they had with the Secretary, and that is the key, perhaps.

Mr. **Bond.** I think that is right.

Mr. **Goldwater.** I think that is a very important part. These Administrators had problems with their Secretaries, and as a result, things got bogged down. But I think it is a well-known bureaucratic principle, that if you want to bog down an agency, you just pile more layers of bureaucracy on top of it. And I think this has happened in the FAA, under the Department of Transportation.

Initially, many people felt that this bad effect would be more than offset by the establishment of an integrated national transportation policy for all modes of transportation. However, the Department of Transportation has never been successful in establishing anything approaching an integrated transportation policy or mode.

In any given year, the destructive effect on the FAA, in my opinion, varies. It depends a lot on the relationship between the Secretary and the Administrator.

However, I think if we were to take a close look at the operation between the two, I think you will find in many instances where your job and your responsibilities have become clouded, have become delayed, have been interfered with, and have jeopardized your excellent capability to administer an agency that is responsible for so many millions of people traveling safely.

Now, I have seen occasions on this subcommittee, as well as the subcommittee I serve on, Transportation, Aviation, and Communication, where aggressive FAA programs were cut back or killed. I looked into them and expected to find the knife in OMB's hand, only to find out that instead, it was in the Department of Transportation and the Secretary's office primarily because they needed more money for buses or subways or for something else.

I recall back several years ago, when one of the Administrators wanted to eliminate a lot of deadweight that was stuck in the FAA and found that there was no way of really getting it out. And he proposed a significant overhaul in the organizational structure of the FAA, only to be completely thwarted and frustrated by an Assistant Secretary for Administration. This went on and on and on, without any resolution of the problem, and as a result, that particular Administration was totally ineffective in that particular year that they were in power.

That is only one that I bring to mind. But I can remember not too long ago, after the San Diego collision on September 25, in the whole area of collision avoidance, the FAA saw an obvious need to accelerate the work that they were doing on collision avoidance. And on February 8, 1979, the FAA Administrator sent an upgraded new plan, known as an acquisition paper update, to the Department of Transportation, strictly for approval. The urgency of receiving approval was made known to the Department of Transportation, since many major elements of collision avoidance system progress were frozen until approval was received. After repeated phone calls from the FAA, the Department of Transportation finally approved the plan as it stood, by a simple, one-page letter written over 2 months later.

So in that instance, the only contribution the Department of Transportation made was a 2-month delay. In another example, just last week, the FAA was ready for their Department of Transportation approval meeting, called TSARC, on the first phase of their air transportation system computer replacement program. We are all aware that these computers are quite controversial, and there is an urgent need to proceed with a great deal of haste. Well, as I understand it, this particular TSARC meeting had to be postponed because the Secretary of Transportation was attending the Democratic Convention.

Now, as trivial as that may seem, that kind of thing goes on down there quite often and has for many years. And it seems to me, Mr. Chairman, that this particular idea has more merit than what the Administrator is giving it today. I think history speaks for itself.

I would be interested also, though, in your comments, because it happens to be your idea, of separating the trust fund from the general unified budget. This is a bill that I introduced and it is receiving increasing support. And it was based on an idea that you floated before us as the reason why you were not spending all the trust fund moneys.

Mr. BOND. Right.

Mr. GOLDWATER. Do you today support that concept—speaking independently, as you are.

Mr. BOND. Always. When I raised the question of the Federal budget and its impact upon the trust fund, I tried to point out to the Congress and numerous committees of the Congress why I thought the separation from revenue stream and expenditures had come about, and I believe that the budget control process has resulted in that.

I did not advocate that the FAA's budget should therefore be taken out of that process. What has happened in a larger sense is that within the overall spending ceilings that the Federal budget must adopt, there are two kinds of programs. One is a controllable program. The FAA's capital program is controllable. It can be ratcheted up or back. Also, research is in the same category along with most defense expenditures, NASA and so on. Those are controllable expenditures. And it is probably no coincidence that those are the programs that do the most for the private sector, which I believe needs a lot of help in the United States today.

The other category in the Federal budget, which now comprises 77 percent of Federal expenditures, is uncontrolled spending, and most, though not all of that, is in the field of social programs.

Now, the Congress, I believe, personally, is going to have to address the relationship between uncontrolled social program spending and controllable, and therefore, controlled, spending that goes to support the private sector. I personally believe that that process has gotten way out of kilter, and I do not know what the solution is, but I would suggest therefore that that balance is wrong, and that some control or some process which compares the benefit of investment in the private sector and the benefit of investment in the social sector each year be made.

I do not think we should get out of the Federal budget, therefore. I think the budget itself should come under better management.

The present system is based on this notion. The uncontrollable programs, social security, medicare, welfare, food stamps, and so on, have gotten the notion in the Congress mind, and perhaps in the public mind, in the 1970's that they are humane, they are the highest and most humane kind of Federal expenditure, and that hardware and technology are of less significance. So they got controlled. I think that notion is absolutely wrong, and that there is a humanity and a social purpose associated with technological investment, safety investment, that is equally as humane as the direct social programs. The Federal budget process does not reflect that view, so a preference is given to social programs, and I believe that is the way to solve this larger problem, rather than simply taking out of the process the FAA budget.

Mr. **Goldwater**. Well, in that regard, I would make the same offer that I made previously, and if you will raise your right hand, I will swear you in as a Republican.

But that still does not address the question of removing the trust fund from the unified budget, on the rationale that today, because of the problems that you cite, it is so very easy to take a surplus of $3.6 billion and make the Federal deficit appear $3.6 billion smaller. The trust fund moneys were collected from user taxes, to be spent for a specific purpose, and that is primarily safety. They should be spent for aviation safety unconstrained by other budgetary matters. And I think this was the message that you were portraying to us the last time you appeared before us.

Mr. **Bond**. The Congress did not create an automatic spending mechanism, however, as it has done with social security and other mechanisms. That was the thought that the committees had when ADAP was created, but they did not create an automatic spending mechanism, as has been done with entitlement programs and in programs that are indexed and so on. They created it differently. It is subject to annual authorizations and annual appropriations, and it is squeezed each year.

Mr. **Goldwater**. All right. But your idea was that if the trust fund was removed from the unified budget, then the expenditures from that trust fund would not be jeopardized or influenced by other budgetary considerations; correct?

Mr. **Bond**. Well, there are actually two budgets, is my understanding. One is the executive branch's budget process, but there is a new process called the congressional budget, and even if it were taken out of the unified executive budget, you would still run into the problem of the budget ceiling set by the Congressional Budget Committees.

So I think that any attempt to handle that would probably have to address both of those. But in any case, I certainly do not advocate that we be taken out of either. It is that the process itself should make better tradeoffs amongst the categories that go in there, because I am conservative enough to believe that there should be some total limit on Federal spending, and I believe that is in the public interest, and that most members of the Congress agree with that, as well.

Mr. GOLDWATER. You do a very good job of backpeddling.

Another area that you touched on in your testimony involved personnel. The blue ribbon panel findings pointed out that we are losing a lot of good talent in the FAA, and that our capabilities, perhaps, are falling far below the industry standards. They recommend that this trend be countered. New people have got to be attracted to the FAA.

You have discussed before, and you touched on it today, the difficulty that the FAA is having in attracting good engineers to the FAA—I am speaking of the western region particularly, because I am more familiar with that—due to the high cost of living there. However, despite these two facts, you are apparently taking steps in the opposite direction in the western region, and I wanted to ask you about this new policy.

I understand that you are now downgrading the Aircraft Engineering Division to a branch under the Flight Standards Division, and all those positions in the Engineering Division will be dropped by one GS grade.

I understand that these engineers will no longer cover certification of transports over 75,000 pounds, but they will still be certifying anything under 75,000 pounds, including general aviation type aircraft, helicopters.

Won't this create even a greater problem in hiring qualified people if this very important function is downgraded?

Mr. BOND. Well, all right, let me put it in context. We have established what we call a single certifying region for heavy jet aircraft, which will be located in Seattle, in the northwest region of the FAA. It will perform the overall duties that were previously performed in certification in the Los Angeles office. Many duties remain, of course, but I think, not having checked lately, that you are correct in characterizing what remains for the aircraft engineering office. However, those functions will be performed by people who are in Seattle. And this is consistent with what the blue ribbon committee has suggested be done, which is that a single center of excellence in one location be created for certification engineering responsibilities. We have done that, again before the blue ribbon committee recommended it and before the Chicago crash. We were on the track with that. We have tried to make this administrative realinement as easy and convenient for our people who are affected by it as possible, and we have tried to make available either the option of staying in Los Angeles and continuing to do other sorts of work available to our people who are there, or permitting them to move to Seattle. They do have that choice, I believe, and we have also tried to minimize the number of actual moves. Most of them, I am confident, will be done on a voluntary basis, because we have that flexibility.

Mr. GOLDWATER. Is that going to create a problem by centralizing that all up in Seattle, when in fact, most of your activity occurs south of there?

Mr. BOND. Well, we will continue to have an area office in Los Angeles which will report to the Seattle operation and which will do a good deal of certification work there, and there will still be an office at Douglas and at Lockheed and at Garrett, and so on. We will have people in each of those plants. So we will not be pulling out. It is a question of single coordination out of one location. I do not think that the net change will be very heavy at all.

Mr. **Goldwater**. I think that is something that we are going to have to watch and see.

Mr. **Bond**. I am confident that the number of people who have to move and so on will be de minimis. We are going to do everything we possibly can to accommodate the individual wishes.

Mr. **Goldwater**. Well, thank you for appearing today and answering some questions.

Mr. **Bond**. Thank you.

Mr. **Anderson**. Before I recognize Mr. Fary for a question, I have a question that relates to one he is going to ask, and I wanted to get mine in first.

Can you give us, Mr. Bond, an update on the slowdown by air traffic controllers at O'Hare Airport, and what action has FAA taken to deal with the situation, and has there been response from the controllers.

Now, before you answer this, I am going to recognize Mr. Fary, because he has a similar question, more in depth, but I want you to know that I am pretty interested in this question myself.

Mr. Fary?

Mr. **Fary**. Thank you, Mr. Chairman.

Coming from the great State of Illinois, I am always happy to see you, Mr. Bond. I guess I have known you for about 30 years, and we talked together in the Illinois Legislature at that time about transportation problems.

I had a little experience last week. I was up at Rochester, Minn., and I had a 5:40 flight coming into Chicago, which was announced as being late. We were scheduled to takeoff at 6:30, and we wound up taking off at 6:40. We got hung up in the air at Eau Clair, Wis., which is about halfway down to Chicago, and we got hung up in a holding pattern there for maybe 20 minutes or so, maybe a little longer, and then we got hung up some more at O'Hare. And as I got in, I noticed a tremendous amount of people there. The concourse was just loaded with people. And they were all very upset about the complete slowdown by the air traffic controllers at the O'Hare tower. The slowdown caused massive delays, wasted fuel, and inconvenienced thousands of innocent people, trying to make connecting flights and what not.

Although you and I know that if the airlines used Midway Airport more, there would be much less congestion at O'Hare, nevertheless, I want to know if you know what this slowdown was all about, or can you, or what are you going to do about it, and does this slowdown have nationwide implications?

Mr. **Bond**. I would be happy to bring you and the chairman up to date on the illegal and criminal slowdown at O'Hare Airport.

Last Friday, one of the most significant events that has happened in the last 3 years in the American air traffic control system occurred. It was a deliberate, organized, conscious strike by our air traffic controllers, who are controlling the busiest airport in the world; that is, O'Hare Airport. As a matter of deliberate decision, a strike, which has been defined by the Federal court to include withdrawal of services or slowdown, occurred.

More than 600 flights were delayed more than 30 minutes at O'Hare Airport; 11 flights were required to land at Milwaukee; 700 overnight rooms had to be purchased by the airlines in order to accommodate people; thousands and thousands of people were jammed into O'Hare Airport. They missed connections, they had to stay overnight. It was a chaotic situation.

One million dollars in fuel alone was wasted, in addition to all the costs the carriers and the individuals have to deal with as a result of a deliberate slowdown. That slowdown came as a result of a written, allegedly nonnegotiable demand to the FAA that the controllers in the O'Hare tower receive annually a $7,500 tax-free bonus.

The letter, I would be happy to submit to the committee for its record—called for a $7,500 tax-free bonus each year. Also in the letter was a demand that the staffing standards in the O'Hare tower be improved, but as I said when I gave a press conference Monday in Chicago, if you believe that this slowdown came as a result of controller staffing standard concerns, you believe in the tooth fairy. It was money that they were after.

And I went to Chicago on Monday and delivered my answer to that nonnegotiable demand. The answer was, "No, you cannot have a $7,500 tax-free bonus each year. The law does not permit it, and you should not have it on the merits, in addition."

On Sunday, in cooperation with the U.S. attorney in Chicago, Judge Bura rendered to the U.S. Government a temporary restraining order, an injunction, ordering the controllers to return to work at the pace which they could perform. And, I might add, they did so very promptly. In fact, the controllers in the O'Hare tower have been able to turn their services and their delays on and off at will, and they do so whenever they consult amongst one another and decide to do it.

So our answer has been, "No, you cannot have a bonus. If you continue to strike illegally, it is a criminal strike. The Government will not put up with it. We will pursue conspiracy charges if necessary, and we will take every affirmative action we can to make people work according to law. We will stay with the side of law on our side."

The U.S. attorney is now continuing those investigations to see if a conspiracy indeed existed.

The incident at O'Hare Airport is part of a larger, nationwide plan to strike the entire air traffic control system of the United States in 1981. There is a plan for that strike. It is written. It has been circulated to the employees of the controllers union throughout the United States, and we have a copy of it, and we have submitted it to the Federal Labor Relations Authority, as an example of part of an unfair labor practice claim.

In addition, PATCO, the controllers union, has raised a strike fund. They have collected money to carry through with the strike, which is patently illegal under Federal law. We have also protested that to the Federal Labor Relations Authority, and in respect to the strike fund, the FLRA's response is it is not actionable because a strike has not happened yet. I view that as the same as passing out atomic bombs and then saying, "Well, there is nothing wrong with doing that. You have not had a nuclear exchange yet." That is the condition of the strike fund, in my opinion.

We will continue to point out what is happening, the preparation for the nationwide strike that is being made, and the related event that is happening in Chicago right today.

The court, incidentally, has named the national officers of PATCO as well as the union officers in Chicago as part of this, and they will have the opportunity to explain, I guess before the U.S. attorney, their role in this slowdown.

Thank you.

Ms. Ferraro. Would the gentleman yield for a question?

Mr. Fary. I will yield to you in 1 second, Ms. Ferraro.

Will you make the correspondence part of the record of this hearing?

Mr. Bond. I will be happy, Mr. Fary, to give the demand for the tax-free bonus, the strike plan, and descriptions of the strike fund that PATCO is raising, all part of the record of this hearing.

Mr. Fary. Thank you.

[The following was received for the record:]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action #

PROFESSIONAL AIR TRAFFIC CONTROLLERS
ORGANIZATION (PATCO); PROFESSIONAL
AIR TRAFFIC CONTROLLERS ORGANIZATION,
O'HARE LOCAL #316 (PATCO O'HARE); THE
OFFICERS, AGENTS, DIRECTORS, MANAGERS,
SERVANTS AND MEMBERS OF BOTH PATCO AND
PATCO O'HARE; JOHN M. PALINO, RICHARD
L. SCHOLL, TOM BROCKETT, JOHN DOE AND
RICHARD ROE,

Defendants.

MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiff United States of America moves this Court to grant forthwith and without notice to defendants or their attorneys a temporary restraining order restraining and enjoining the defendants, their agents, servants, employees and attorneys, and those persons in active concert and participation with them from causing, encouraging or participating in a strike, by way of slowdown or otherwise, or in any fashion or by any means interfering with the usual and orderly handling of air traffic within the Northern District of Illinois and other parts of the United States, pending a hearing and disposition of plaintiffs prayer for a preliminary injunction filed herewith, on the ground that immediate and irreparable loss, damage and injury will result to plaintiff before formal notice can be served and a hearing held on plaintiff's prayer for a preliminary injunction, if defendants are permitted to continue their illegal strike as more fully appears from plaintiff's verified complaint herein and the attached affidavit of Wayne J. Barlow, Great Lakes Regional Director, Federal Aviation Administration, as well as the attached certificate of applicant's attorney certifying the efforts which have been made to give defendants and their attorneys notice, and the reasons notice of this motion should not be required.

Dated: August 17, 1980

THOMAS P. SULLIVAN
United States Attorney

By:

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ATTORNEY'S CERTIFICATE

LINDA A. WAWZENSKI, Assistant United States Attorney, hereby certifies that the formal service of notice of the United States' application for a temporary restraining order should not be required due to the immediacy of the matter and the fact of the application being made on a weekend.

Telephone contact with Defendant PATCO, in the person of defendant Paolino; defendant PATCO O'Hare, in the person of defendant Scholz; defendants Paolino and Scholz personally; and defendant Brockett was made or attempted prior to 10 A.M., to advise those defendants that an application for a temporary restraining order would be presented to Judge Nicholas Bua at his residence in Melrose Park, Illinois, at 12 o'clock, noon, August 17, 1980.

Contact was not made with any attorneys locally, because their identity is not known to attorneys for the plaintiff.

Telephonic notification with Washington, D.C. counsel for defendant PATCO was made or attempted by the Chief Counsel's Office of the Federal Aviation Administration.

By reason of the foregoing, notice and hearing in the matter of the issuance of a temporary restraining order in this case should not be required.

Certified by me as true and correct on August 17, 1980.

LINDA A. WAWZENSKI
Assistant United States Attorney
Northern District of Illinois

④

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

* *

UNITED STATES OF AMERICA,

Plaintiff,

v. Civil Action #

PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION (PATCO); PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION, O'HARE LOCAL #316 (PATCO O'HARE); THE OFFICERS, AGENTS, DIRECTORS, MANAGERS, SERVANTS AND MEMBERS OF BOTH PATCO AND PATCO O'HARE: JOHN M. PAOLINO, RICHARD L. SCHOLZ, TOM BROCKETT, JOHN DOE AND RICHARD ROE,

Defendants.

* *

COMPLAINT

The UNITED STATES OF AMERICA, by its attorney, Thomas P. Sullivan, United States Attorney for the Northern District of Illinois, complaining of the defendants, alleges:

1. This Court has jurisdiction of the subject matter of this action under 28 U.S.C. 1345.

2. Defendant Professional Air Traffic Controllers Organization (hereinafter, PATCO) is a corporation doing business within the Northern District of Illinois.

3. PATCO is a labor organization which represents a substantial number of air traffic controller employees of the Federal Aviation Administration (hereinafter, FAA), an agency of the United States of America.

4. Defendant Professional Air Traffic Controllers Organization, O'Hare Local #316 (hereinafter, PATCO O'Hare), is a corporation doing business in the Northern District of Illinois.

5. PATCO O'Hare is the local affiliate of defendant PATCO, its national parent, and serves as a labor organization which represents a substantial number of air traffic controllers, employees of the FAA, specifically at the Chicago-O'Hare International Airport Air Traffic Control Tower (hereinafter, O'Hare Tower) and the Chicago O'Hare International Airport Terminal Radar Approach Control facility (hereinafter, O'Hare TRACON).

6. Defendant Richard Scholz is an employee of the FAA, serves as a controller at the O'Hare TRACON, and is president of PATCO O'Hare.

7. Defendant Tom Brockett is an employee of the FAA, serves as a controller at the O'Hare TRACON, and is vice-president of PATCO O'Hare.

8. Defendant John M. Paolino is an FAA employee on leave without pay and is the PATCO national vice-president for the Great Lakes Region.

9. Upon information and belief, Defendants JOHN M. PAOLINO, RICHARD L. SCHOLZ, and TOM BROCKETT have engaged in, encouraged, aided and abetted strike activity against the United States of America.

10. Defendant PATCO and PATCO O'Hare, aided and abetted by the individual defendants herein, organized, directed, and commenced a strike against the operations of the air traffic control system and the movement of air traffic within the District and throughout substantial areas of the United States.

11. The aforesaid strike was commenced at the behest of PATCO and PATCO O'Hare and implemented by those individuals named herein throughout the air traffic control system of this District on or about July 31, 1980, and continues to be in effect.

12. This strike has taken the form of a concerted slowdown and a concerted obstruction to the movement of aircraft in air commerce or air transportation in this District and in substantial areas of the United States.

13. This strike has significantly impaired operations of the air traffic control system and the movement of air traffic within the Northern District of Illinois and throughout substantial areas of the United States. Moreover, this strike has significantly interfered with the normal flow of commerce between the States and has caused great loss and inconvenience to the public and to the airlines.

14. PATCO has failed to take any action to prevent or to stop the illegal actions of its members at O'Hare.

15. Unless the aforesaid strike is enjoined, the United States of America, plaintiff herein, and its citizens will suffer immediate and irreparable injury for which there is no adequate remedy at law.

16. This strike constitutes action in violation of 5 U.S.C. §7311, which prohibits employees of the United States from, inter alia, participating in or asserting the right to strike against the United States of America.

17. A preliminary injunction was issued on behalf of the United States against PATCO, in similar circumstances, by the United States District Court for the Eastern District of New York on May 5, 1970.

See Air Transportation Association v. PATCO, 313 F. Supp. 181 (E.D. N.Y. 1970), vacated in part, 438 F. 2d 79 (2nd Cir 1970), cert. denied, 402 U.S. 915 (1971).

18. No previous application has been made by or on behalf of the United States in the United States District Court for the Northern District of Illinois for the relief sought herein.

WHEREFORE, plaintiff United States of America prays:

1. That the defendants PATCO and PATCO O'Hare, their officers, agents, servants, members, and attorneys, and the individual defendants named herein, and any and all employees of the Federal Aviation Administration, whether or not affiliated with PATCO or PATCO O'Hare, and all other persons in active concert or participation with the defendants or any of them be hereby restrained:

a. from, in any manner, continuing, encouraging, ordering, aiding, engaging, obstructing or taking any part in any work stoppage or slowdown, or any interference with or obstruction to the movement or operation of any aircraft in air commerce or air transportation at any traffic facility operated by the Federal Aviation Administration or interference with or obstruction to the application of the safety standards or procedures established by the Federal Aviation Administration for the regulation and control of air traffic in the United States.

b. from, in any manner, interfering with or obstructing the orderly continuance of air traffic in the United States, and

c. from taking any action which would interfere with this Court's jurisdiction in the premises; provided, however, that nothing in this paragraph shall be construed to require an individual employee to render labor or service without his consent or to make the voluntary quitting of his labor or service by an individual employee, on his own initiative and not in concert with the defendants herein, an illegal act.

2. That the defendants PATCO and PATCO O'Hare, their officers, agents, servants, employees and attorneys be directed:

a. to instruct immediately all of its members to resume their normal employment, and

b. to take all action which may be necessary to insure that such instructions are carried out, including but not limited to posting a copy of any Court injunction or Restraining Order that may issue out of this Court at all facilities normally used and/or occupied by members of PATCO and PATCO O'Hare either in the performance of their duties as air controllers or as meeting places for the conducting of the business of PATCO or PATCO O'Hare.

3. That this Court, pending the final determination of this case, issue a Preliminary Injunction restraining and enjoining the defendants PATCO and PATCO O'Hare, their members, officers, agents, servants and attorneys and all defendants named individually herein and all persons in active concert or participation with them in the manner and form aforesaid.

4. That pending the issuance of the aforesaid, this Court issue forthwith a Temporary Restraining Order restraining and enjoining the defendants PATCO and PATCO O'Hare, their members, officers, agents,

servants and attorneys and all defendants named individually herein and all persons in active concert or participation with them in the manner and form aforesaid.

5. That this Court grant plaintiff, United States of America such other and further relief as may be just and proper.

Dated:

THOMAS P. SULLIVAN
United States Attorney

By:

LINDA A. WAWZENSKI
Assistant United States Attorney
Northern District of Illinois
Attorney for Plaintiff
Everett McKinley Dirksen Bldg.
219 S. Dearborn Street
Room 1500 South
Chicago, Illinois 60604

VERIFICATION

STATE OF ILLINOIS)
COUNTY OF COOK) SS.
NORTHERN DISTRICT OF ILLINOIS)

ALAN G. SUMBERG, being duly sworn, deposes and says that he is Associate Regional Counsel for the Great Lakes Region of the Federal Aviation Administration, and as such shares responsibility for the above-entitled action; that he has read the foregoing Complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

That the sources of deponent's information and the grounds of his belief are official records and files of the United States.

That the reason this verification is made by deponent and not by plaintiff is that plaintiff is a corporation sovereign.

ALAN G. SUMBERG
Associate Regional Counsel
Federal Aviation Administration
Great Lakes Region

Subscribed and sworn to before me
this _____ day of ____________, 1980.

Notary Public

AFFIDAVIT IN SUPPORT OF COMPLAINT

WAYNE J. BARLOW

WAYNE J. BARLOW, Director of the Great Lakes Region, Federal Aviation Administration, states:

1. I am the Director of the Great Lakes Region, Federal Aviation Administration, Department of Transportation, and the matters stated herein are based upon my knowledge, upon information available to me in my official capacity, and upon information and belief. In my official capacity I am charged with the responsibility for directing the program of the Federal Aviation Administration throughout the Great Lakes Region, which includes the Northern District of Illinois.

2. The Federal Aviation Administration, an agency of the United States Government, employs within the Northern District several hundred employees (controllers) to work in the operation of the air traffic control system provided by the FAA under Section 307 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348).

3. The Professional Air Traffic Controllers Organization (PATCO) and the Professional Air Traffic Controllers Organization Local #316 (PATCO O'Hare) are corporations doing business in the Northern District of Illinois, and representing a large number of the aforesaid employees.

4. Since approximately July 31, 1980, PATCO O'Hare, through its officers, spokesmen, and members, has been causing and encouraging the air traffic controllers employed at the O'Hare Tower and TRACON to participate in a strike against the Federal Government, contrary to 5 U.S.C. §7311 and 18 U.S.C. §1918.

5. During the same period, PATCO has been aiding and abetting the conduct described above by its failure to take action to prevent or stop the activity set forth above.

6. On July 30, 1980, PATCO O'Hare delivered to the Great Lakes Regional Headquarters a letter signed by defendant Richard L. Scholz, in which PATCO made several demands upon the FAA, including a recertification and upgrading of the O'Hare Tower, and an annual tax-free bonus of $7,500 to every journeyman controller at the O'Hare Tower and TRACON. In this letter PATCO further stated that these two demands are "not negotiable", and it added that these demands must be "met or proven to be in the implementation stage within 10 days". Moreover, PATCO O'Hare therein stated that failure to meet these two demands would result in the controllers at O'Hare "withdrawing their enthusiasm". (See Appendix 1, attached hereto)

7. The air traffic control functions at O'Hare are handled in the TRACON, for airborne aircraft approaching and departing O'Hare, and in the Tower, which controls the actual landing, takeoff and ground activity for aircraft at the airport. The Tower and TRACON are located in the same building, but are physically and operationally separate.

8. On August 5, 1980, a meeting was held between Richard Scholz, John M. Paolino and Tom Brockett for PATCO and PATCO O'Hare, and Joseph Borslet, Chester Anderson and myself for the FAA, wherein the above-mentioned letter and its contents were discussed. I notified PATCO and PATCO O'Hare, by letter, that the FAA considered the letter a threat of an illegal "job action". (See Appendices 2 and 3) In addition, the

PATCO national officers were likewise noticed by the FAA Washington Headquarters (See Appendix 4).

9. Subsequent to delivery of this letter, commencing on or about July 31, 1980, a strike at the O'Hare Tower and TRACON began at the behest of PATCO O'Hare, and is still in effect.

10. Air traffic controllers, members of PATCO O'Hare, have engaged in this strike by conducting a work slowdown and by interfering with and obstructing the orderly and normal operation of the FAA's air traffic control functions, resulting in substantial and significant impairment to the air traffic control system in the Northern District of Illinois and in substantial parts of the United States of America. Said interference and slowdown take the form of, among other things, greater than usual separation of aircraft, the failure to coordinate the handling of aircraft so as to obtain maximum utilization of available runways, the unnecessary use of holding patterns and the distraction of supervisors to limit their effectiveness in maintaining normal operations.

11. As an example of the significant interference resulting to the movement of aircraft, on August 15, from 12:01 a.m. to 9 p.m., there were approximately 616 delays of 30 or more minutes experienced by aircraft arriving at and departing from O'Hare. The longest delay experienced was 3 hours. During comparable time periods on 3 Fridays prior to this date, July 11, July 18 and July 25, there were, respectively, 29, 0 and 0 delays of 30 or more minutes. Factors such as weather and runway conditions were comparable during these dates. The approximate cost in aviation fuel due to the delays on August 15th alone is estimated at $1,000,000.

12. Those interruptions are causing a substantial reduction in air service to the travelling public and are causing long delays at many airports. For example, on August 15th, 11 flights were diverted from O'Hare to other airports as a result of the traffic congestion caused by the controllers at O'Hare.

13. As a result of this described strike, air traffic in the Great Lakes Region and elsewhere in the United States has been severely disrupted with great loss and inconvenience to the public.

14. These interruptions to the flow of air traffic and air commerce of the United States are causing irreparable harm and injury to the public interest.

WAYNE J. BARLOW
Director
Federal Aviation Administration
Great Lakes Region

Subscribed and sworn to before me
this ____ day of __________, 1980.

____
Notary Public

patco o'hare
The World's Busiest
PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION
O'Hare Local [illegible]
P.O. BOX [illegible] • A.M.F. O'HARE, ILLINOIS [illegible]
Affiliated with M.E.B.A. (AFL-CIO)

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July 30, 1980

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Mr. Wayne Barlow
Regional Director
Federal Aviation Administration
Great Lakes Region
2300 East Devon Avenue
Des Plaines, Illinois 60018

Mr. Barlow:

The air traffic controllers at O'Hare Airport have had it! We're tired of unkept promises. We're tired of staff studies. We're tired of rhetoric.

540

FACT: O'Hare Tower presently has 69 Full Performance Level controllers. We are authorized 121. That's 57% authorized staffing. In 1976 we had 63 FPLs. In 1978 we had 73 FPLs. Our staffing level had hovered around 60% for many years, yet the FAA refuses to use sufficient incentives to increase those numbers.

Eighteen months ago, the O'Hare Tower Chief stated that 51 FPLs in the radar room would be the minimum acceptable staffing level for an increased release program. He expected to be at that level within approximately 6 months. We are presently at 38 FPLs.

The December 1978 Staff Study prepared by O'Hare management personnel indicated a comprehensive monetary incentive program appeared to be the only realistic, long-term solution. To date - no action on that proposal.

FACT: A reclassification appeal for the Tower was filed with the Civil Service Commission 20 months ago. The FAA's timid endorsement of the reclassification was typical. The busiest airport in the world, yet the Tower controllers do not earn the maximum salary for their profession. The FAA continues to allow this injustice when it is common knowledge that a personal appeal by Mr. Bond in our behalf would quickly solve the problem. Washington National Airport was upgraded within 90 days of FAA endorsement! To date - no action on this proposal.

APPENDIX 1

FACT: In the last 12 months, 16 trainees have entered the TRACON. To date, only 2 have certified and they were previous O'Hare controllers. Our lack of high quality trainees is directly related to our nonexistent incentive program.

FACT: Two years ago, the radar room underwent a lengthy and extensive modernization. The TRACON controllers were forced to double up on radar scopes and work under extremely trying conditions. For their effort they were given a $50 cash bonus. That's correct - $50.

FACT: In the summer of 1977, the Inner and Outer taxiways underwent construction. In the summer of 1978, runway 14L underwent construction. In the summer of 1979, runways 22R and 27R were affected by construction. This summer, runway 27L is affected by construction.

After four consecutive summers of working airplanes under very difficult conditions; after four consecutive summers of working more airplanes than any other airport in the world; after four consecutive summers of expeditious aircraft movements, the Tower controllers receive a letter of thanks from Mr. Bond and a $50 bonus. That's correct - a whooping $50.

FACT: In order to maintain the most minimum of staffing levels, the O'Hare controllers are working massive amounts of overtime. These massive amounts of overtime are necessary to staff the positions required to operate the world's busiest airport. When staffing levels cannot be attained, the controllers must work short-handed. For the first seven months of 1980, the TRACON controllers are averaging a 6-day work week, every other week! Besides being a fiscally poor use of funds, the 6-day work week is extremely demanding on the controllers' physical and mental well-being. The continual operation at minimum staffing levels also makes it difficult for the controllers to use their vacation time in "spot leave" situations. For many controllers, when the opportunity does present itself to take a day off, the federal pay aggregate prevents that because of a possible loss of wages already earned!

FACT: The O'Hare controllers have been patiently asking for a backup computer for over four years. The FAA insists our present system is sufficient. During June, the controllers were forced to work without the computer for 10 days because of another malfunction. During that 10 day period, traffic delays were almost nonexistent, safety was maintained and hugh numbers of airplanes were encountered. For their efforts, the controllers were given more paperwork!

Mr. Barlow, the time has finally arrived when the O'Hare controllers must demand a stop to these idiotic proceedings. For many years, the O'Hare controllers have overextended themselves in an effort to provide the best possible service to the flying public and the aviation industry. We have continuously pointed out to the FAA the shortcomings in our work environment. In response, the FAA gives us promises, rhetoric and a $50 bonus. This fiasco must stop now!

The O'Hare controllers demand the following two changes at O'Hare Tower:

1. The O'Hare Tower be recertified to a Level V facility. You can accomplish that in any number of ways; however, an immediate upgrade is demanded.
2. Every journeyman controller at O'Hare (Tower and TRACON) be given a yearly lump sum bonus on the anniversary date of his/her check-out. The bonus will be paid at the completion of each year of journeyman work. The bonus shall be tax-free, as is a cost-of-living allowance. The bonus shall not be part of our aggregate salary. The bonus shall be no less than $7,500.

These two demands are not negotiable. These two demands must be met or proven to be in the implementation stage within 10 days. Failure to meet these two demands will result in the controllers at O'Hare ATCT withdrawing their enthusiasm. That's correct - withdrawing enthusiasm. No more overextending. No more 6-day work weeks. No more corner cutting.

If the FAA is not prepared to compensate the controllers at the world's busiest airport for our many problems and shortcomings, then we are no longer prepared to produce 150% for you!

For the O'Hare Controllers,

Richard L. Scholz
President, PATCO O'Hare

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
GREAT LAKES REGION
2300 EAST DEVON AVENUE
DES PLAINES, ILLINOIS 60018

August 5, 1980

Mr. John M. Paolino
Vice-President, PATCO
Great Lakes Region

Dear Mr. Paolino:

I have received PATCO's letter of July 30, 1980, signed by Mr. Richard L. Scholz, concerning various issues at the O'Hare Airport Traffic Control Tower and TRACON. As you know, the FAA has been actively engaged in seeking solutions to these issues.

It was my intention to meet with Mr. Scholz and any interested controllers on Tuesday, August 5, 1980, to review the matters raised in PATCO's letter and our mutual concerns. However, because of the complexity of the issues, I have concluded that it is important that they be carefully analyzed by the appropriate FAA offices. Therefore, I plan to respond to PATCO within two weeks, clearly setting forth the FAA position.

I view PATCO's statements regarding withdrawal of "controller enthusiasm" with great concern, for they constitute a direct threat of a job action. As such, I remind you of your responsibilities as a labor organization under Title 5 United States Code, Section 7116(b)(7)(A) and (B), and the individual responsibilities of your members as Federal employees under Title 5 United States Code, Section 7311. I am prepared to take timely and appropriate action to insure that the safety of the flying public is not compromised. In addition, appropriate measures will be taken with respect to any employee and organization taking part in an illegal job action.

As I previously indicated, the FAA shares PATCO's concern regarding the issues raised. We intend to continue to work aggressively with both PATCO and other Federal agencies to resolve these issues.

Sincerely,

Wayne Barlow

WAYNE J. BARLOW
Director

APPENDIX 2

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
GREAT LAKES REGION
2300 EAST DEVON AVENUE
DES PLAINES, ILLINOIS 60018

August 5, 1980

Mr. Richard L. Scholz
President, PATCO O'Hare

Dear Mr. Scholz:

This will acknowledge your letter of July 30, 1980, concerning various issues at the O'Hare Airport Traffic Control Tower and TRACON. As you know, the FAA has been actively engaged in seeking solutions to these issues.

It was my intention to meet with you and any interested controllers on Tuesday, August 5, 1980, to review the matters raised in your letter and our mutual concerns. However, because of the complexity of the issues, I have concluded that it is important that they be carefully analyzed by the appropriate FAA offices. Therefore, I plan to respond to PATCO within two weeks, clearly setting forth the FAA position.

I view PATCO's statements regarding withdrawal of "controller enthusiasm" with great concern, for they constitute a direct threat of a job action. As such, I remind you of your responsibilities as a labor organization under Title 5 United States Code, Section 7116(b)(7)(A) and (B), and the individual responsibilities of your members as Federal employees under Title 5 United States Code, Section 7311. I am prepared to take timely and appropriate action to insure that the safety of the flying public is not compromised. In addition, appropriate measures will be taken with respect to any employee and organization taking part in an illegal job action.

As I previously indicated, the FAA shares PATCO's concern regarding the issues raised. We intend to continue to work aggressively with both PATCO and other Federal agencies to resolve these issues.

Sincerely,

Wayne Barlow

WAYNE J. BARLOW
Director

APPENDIX 3

AUG 6 1980

Mr. Robert E. Poli
President, Professional Air
Trafffic Controllers Organization
444 No. Capitol Street, N.W.
Washington, D.C. 20001

Dear Mr. Poli:

Enclosed is a letter we received from O'Hare Local #316, Professional Air Traffic Controllers Organization in which it appears the union has called for an illegal job action if its demands are not met. Such action is an unfair labor practice under 5 USC 7116(b)(7)(A). In addition, 5 USC 7116(b)(7)(B) provides that condoning this activity by failing to take action to prevent or stop it is also an unfair labor practice. We ask that you meet your responsibility under the law to prevent and stop the illegal activities of PATCO. We also point out that such actions by PATCO have been permanently enjoined by court action in Air Transport Association of America v. PATCO, 70 Civ. 400, D.N.Y. (1978), Affirmed 2nd Cir.; cert. denied (May 16, 1979).

Sincerely,

Original Signed By
Joseph E. Noonan

JOSEPH W. NOONAN
Acting Director of Labor Relations

Enclosure

APPENDIX 4

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
GREAT LAKES REGION
[illegible]
[illegible]

August 18, 1980

Richard L. Schols
President, PATCO O'Hare
P.O. Box 66504 A.M.F.
O'Hare, Illinois 60666

Dear Mr. Schols:

I have carefully reviewed the specific issues and demands in your July 30 letter. They include: shortage of "checked out" controllers, increased pay for control tower personnel, and annual payment of a $7,500 tax-free bonus for all journeyman controllers.

Annual $7,500 Tax-Free Bonus

A special tax-free bonus of $7,500 for O'Hare controllers, in fact, amounts to a demand for a pre-tax bonus of about $11,000 annually. You state this is a non-negotiable demand. There is no basis in law, as you know, for payment of a bonus in any amount. Only Congress can alter pay of Federal employees, including controllers at O'Hare.

The average annual earnings of a radar controller at O'Hare is now $43,900; the highest paid radar controller last year earned $56,100. Your demand would raise these figures to $54,900 and $67,100, respectively.

The bonus you demand would be grossly unfair to other controllers who share responsibility with O'Hare for safe and expeditious air traffic control. My response to a special bonus is no. You are correct, it is non-negotiable.

Incentives

I had considered providing O'Hare controllers a preferential placement program, but I find it inappropriate in light of the current activity within O'Hare. Further consideration of preferential placement will be given when illegal job actions have stopped and conditions return to normal.

Staffing and Recruitment

To improve staffing at O'Hare, we will immediately broaden recruiting from other facilities at all grade levels — GS-7 through GS-14. This will include recruiting top graduates of the FAA Academy air traffic training program. We will also establish the means to hire applicants who have had two or more years of radar air traffic control experience in the military service for O'Hare at the GS-9 level.

We recognize that our policies, which require progression to the full performance level or separation, may deter prospective candidates. We therefore will change this policy for those controllers who transfer to or are assigned to O'Hare as initial hires. We will assure them that, should they fail the O'Hare training program, they will be placed in another air traffic facility. They will not risk loss of their job if they do not successfully complete any phase of the O'Hare training program. Where reassignment involves a geographic move, costs will be paid by FAA consistent with Federal allowances.

I am convinced that these changes will provide sufficient controllers to assure a continuing and adequate source to maintain the full performance controller staffing needed at O'Hare.

Training

We will also improve the selection and training programs for O'Hare. Controllers selected from other FAA facilities will be temporarily assigned to O'Hare for a 4- to 6-week period for initial training and will be paid per diem. Upon completion of initial training, successful controllers will be permanently assigned to O'Hare. Controllers who are not successful in the initial training will return to their previous position.

Additional resources will be brought into the training system to reduce the workload of O'Hare Journeyman controllers in the training of developmental controllers. New recruits will be given initial training at the FAA Academy and specific O'Hare-oriented simulator training at the FAA Technical Center in Atlantic City. This training will serve to teach and develop skills and familiarize developmental controllers with the O'Hare traffic environment.

Control Tower Pay

The tower controllers at O'Hare are properly classified and properly compensated for the services they perform. Therefore, we will not increase their pay by upgrading the facility. The present grade of the tower controllers is the result of the separation of the tower and radar room in 1973. The tower was subsequently upgraded to GS-13 when the new classification standards were implemented in 1977. As your own letter highlights, the U. S. Office of Personnel Management affirmed the grade in answer to an appeal filed with them. The operational reasons which led to the separation of the tower and radar room were and continue to be valid. Should the operational demands change, the region will consider recombining the tower and radar room.

In summary, we reject the $7,500 tax-free bonus and upgrading of the tower, but will expend every effort to improve the staffing and training at O'Hare.

Wayne J. Barlow

WAYNE J. BARLOW
Regional Director
Great Lakes Region

cc: John M. Paolino
Vice-President, PATCO

patco o'hare

The World's Busiest

PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION
O'Hare Local #316
P.O. BOX 66504 • A.M.F. O'HARE, ILLINOIS 60666
Affiliated with M.E.B.A. (AFL-CIO)

August 18, 1980

Mr. Wayne J. Barlow, Director
Federal Aviation Administration
2300 East Devon Avenue
Des Plaines, Illinois 60018

Mr. Barlow:

I have been directed by the Executive Board of the Professional Air Traffic Controllers Organization to withdraw my letter to you of July 30, 1980 and any request or demand made therein.

I take this action to avoid continuing misinterpretation of that letter and to emphasize the point made by me in my letter to you of August 8, 1980. More specifically, I take this action to demonstrate that my letter of July 30, 1980 was in no way intended as a threat of an illegal slowdown or of any other air traffic action by any air traffic controller.

Furthermore, I reiterate that no such illegal action has been taken by any member of PATCO.

Richard L. Scholz

Richard L. Scholz
PATCO Local 316

patco
PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION
SUITE 820/44• NORTH CAPITOL ST. N.W.
WASHINGTON, D.C. 20001 (202) 638-6500
Affiliated with M.E.B.A. (AFL-CIO)

President
Robert E. Poli
Executive Vice President
Robert E. Meyer

March 31, 1980

MEMORANDUM

To: Benefit Committee Members
Facility Representatives

From: Robert E. Meyer, Executive Vice President

Re: Strike Relief Background From The Management Side

In an effort to acquaint you with the various statutes, tactics and techniques used by public employers to break or dilute a union's strike effort, I am enclosing Part I of a three-part series.

It is imperative that you read and re-read the information contained in these packages.

You will find that much of the information falls into anti-pre strike planning and seems to parallel that of a union strike plan. Whether we like it or not, that is the name of the game. Each side wants to win.

I believe you will find Parts II and III just as educational and informative as Part I, and you are to brief your membership on any and all of this type information.

If there are any questions regarding this material, contact your Regional Vice President immediately.

/cfs

cc: R. Poli
D. Reardon
Regional Vice Presidents
M. Rock
R. Long
J. Maher
J. Seddon

PART I

A. WHAT CONSTITUTES AN ILLEGAL STRIKE?

Basically, by law or court decisions, strikes by public employees in 42 jurisdictions are illegal, while in eight jurisdictions some categories of public employees are permitted the right to strike. Unfortunately, Air Traffic Controllers do not fall into the latter category.

Because it is illegal for the Air Traffic Controller to strike, as well as other Federal employees, it is interesting to purview what types of job actions the courts have considered strikes. It is interesting to find that the courts very uniformly have determined that any concerted withholding of services or activities that disrupt or interfere with the carrying out of governmental functions fall under the category of strike.

1. Picketing for recognition where the picketing is disruptive and interferes with or impedes a governmental function.
2. Refusal to work because of alleged safety violations.
3. Refusal to work overtime.
4. Maintaining partial staffs on schedule arranged by union.
5. Sick-outs.
6. Overly meticulous adherance to the rules.
7. Refusal to work extra hours.
8. Mass resignations.

The above, just to name a few, indicate that just about anything the federal (public) employee does can constitute an illegal strike, thus entitling the employer to appropriate re-dress.

It is interesting to note that if the employer is going to act effectively against union job actions they must review and update their anti-strike plans. Management will follow these three rules:

1. Strikes: Strikes by employees are prohibited and any employee who engages in a strike shall be subject to strict disciplinary action. The term "strike" as used in this regulation means concerted action in failing to report to duty; willful absence from one's position; stoppage of work; slowdown, or abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or

coercing a change in the conditions, compensation, rights, privileges, or obligations of employment.

2. Absence from Duty: Every member who fails to appear for duty at the date, time and place specified without the consent of the departmental supervisor is "absent without leave". Each member who finds it necessary to take sick leave shall report this fact at least two hours prior to the beginning of his shift, if at all possible. Supervisory personnel will keep a record of any violation(s) or incident(s) and report it to their superiors when appropriate.

3. Sickness and Injury: An employee shall notify his/her supervisor when leaving home or the hospital when on sick leave. When a supervisor visits an injured or sick employee, he/she must be granted access at any reasonable hour and must be accurately and fully informed of the nature of the injury or sickness.

   An employee feigning sickness or injury or otherwise deceiving a supervisor as to his/her condition while on sick leave shall be subject to strict disciplinary action.

   An employee shall submit a doctor's release to his/her supervisor after an absence of three sick days or longer due to sickness or injury, or whenever requested to do so by his/her supervisor.

The rule suggested above concerning sick leave is important since police officers and other public employees have been known to contact "blue flu" and other assorted feigned illnesses.

B. INJUNCTIVE RELIEF AGAINST ILLEGAL PUBLIC EMPLOYEE STRIKES

1. Parties Entitled To Seek Injunctive Relief. In most jurisdictions, it is reasonably clear that the public employer — whether it be a village, municipality, school board, or state or Federal government — is the proper party to seek injunctive relief. Occasionally, however, a union contends that the public employer in question does not have the capacity to sue. For example, in Joint School District No. 1 v. Wisconsin Rapids Education Association, 234 N.W.2d 289 (Wis. S. Ct. 1975), the union argued that a board of education was not a body corporate and, therefore, lacked the legal capacity to sue. In rejecting this contention, the court held that the fact that the action was brought in the name of the board of education rather than the school district or the city was irrelevant.

   A question related to capacity to sue is whether a third party affected by a strike has standing to seek injunctive relief. Taxpayers, in particular, frequently seek to obtain such relief, especially where they think the public officials have not done enough. The response of the courts to such third party suits for injunctive relief have been varied.

In Allen v. Maurer, 6 Ill.App.3d 633, 286 N.E.2d 135 (4th Dist. 1972), an Illinois court held that taxpayer-parents could not sue to enjoin a strike by public school teachers. In so ruling, the court stated:

> "We hold that in the circumstances present here, the authority to seek an injunction rests in the State and its official representative, the Board of Education, the members of which are elected by the people to implement the command of the constitution. Any other decision would have the effect of usurping the Board of Education's control of the local educational system. ... The goal of that system ... must, of necessity, rest solely with the Board of Education."

Accord, Alling v. Williamsport Area School District & Teachers, 88 LRRM 3551 (Pa. Ct. C.P. 1975).

On the other hand, the Supreme Court of Ohio in City of Cincinnati v. Cincinnati District Council 51, AFSCME, 35 Oh.St.2d 197, 299 N.E.2d 686 (1973), held that a taxpayer could intervene in contempt proceedings against the union that allegedly violated the terms of an injunction, even though the employer had moved to dismiss the action. The court held that such taxpayer intervention is permissible if the litigation touches on matters of public interest such as the preservation of city services or the maintenance of respect for the lawful orders of the court. Similarly, in Air Transport Ass'n. v. PATCO, 313 F Supp. 181 (E.D.N.Y.), vacated in part on other grounds sub nom, U.S. v. PATCO, 438 F.2d 79 (2d Cir. 1970), cert. denied, 402 U.S. 915 (1971), a court ruled that an association of private airlines had standing to seek a preliminary injunction against a work stoppage which allegedly violated a federal statute prohibiting strikes by federal employees. In permitting private parties to seek such injunctive relief, the court observed that a strike could have the reasonably foreseeable effect of causing the airlines harm which could not be fully remedied by a damage action.

2. Necessary Authorization to Seek Injunctive or Other Relief Against Illegal Strikes by Public Employees. From time to time a union in defending against a law-suit filed by a public employer against a strike by public employees will defend on the ground, among others, that the appropriate public body has not officially authorised the litigation.

For example, in Mead School District v. Mead Education Association, 88 LRRM 2984 (Wash. S. Ct. 1975), the court held that a school board could not seek injunctive relief against a teachers' strike since the suit was authorized at a meeting of the school board which was conducted in violation of the requirements of the Washington Open Public Meetings Act. The act in question provided that there must be written notice provided to the members of the body and the media 24 hours prior to a special meeting of a public body, except in emergency situations. In this case, the court held that a teachers' strike did not constitute an emergency and, as a result, that the notice requirements applied. Since the notice requirements had not been complied with, the court held that the Board's authorization to seek injunctive relief was null and void. Since many states have open meeting laws which contain similar notice provisions, a public employer should consider adopting a policy which would permit designated administrative officers to seek injunctive relief without the need for specific authorization in each and every case. Consider, for example, the following authorizing language:

> "The City Manager is authorized to commence such legal proceedings as may be appropriate to restrain and/or deal with strikes or work stoppages against the City of ______________."

3. Non-Applicability of Anti-Injunction Acts. A total of 25 states have enacted anti-injunction acts which, like the Norris-LaGuardia Act after which most were patterned, prohibit courts from issuing injunctions against peaceful concerted activity.[1] Although public sector unions frequently assert that such anti-injunction statutes prohibit the issuance of injunctions against peaceful public sector strickes, this contention has been consistently rejected.[2] As the Rhode Island Supreme Court observed in City of Pawtucket v. Teachers Alliance, Local 930, 87 R.I. 364, 141 A.2d 624 (1958):

> "The abuses which anti-injunction legislation was aimed at correcting did not involve labor disputes between the government, national, state or local, and its employees."

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[1] Arizona, Connecticut, Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Washington, Wisconsin and Wyoming.

[2] See generally, Clark, "The Applicability of the Illinois Anti-Injunction Act to Public Sector Strikes," 63 Ill. B.J. 66 (Sept-

Indeed, the United States Supreme Court, in *United States v. United Mine Workers of America*, 330 U.S. 258 (1947), held that the Norris-LaGuardia Act was not applicable "to situations in which (the) United States appears as employer."[3]

Courts in at least sixteen states have held that their anti-injunction statutes are not applicable to public employers.

a. Arizona -- *CWA v. Arizona Bd. of Regents*, 17 Ariz. App. 401, 498 P.2d 472, 81 LRRM 2135 (1972).

b. Idaho -- *Oneida School District v. Oneida Education Ass'n.*, 567 P.2d 830, 95 LRRM 3244 (Id. S. Ct. 1977).

4. *Prerequisites for Obtaining Injunctive Relief*. What a public employer must allege and prove in order to obtain an injunction against a strike by public employees varies from jurisdiction to jurisdiction. In most jurisdictions, however, it is sufficient to merely show that public employees are engaging in a strike which is illegal under applicable law or court decision. For example, in *Anderson Federation of Teachers, Local 519 v. School City of of Anderson*, 252 Ind. 558, 251 N.E.2d 15 (1969), *cert. denied*, 399 U.S. 928 (1970), the Indiana Supreme Court held that "strikes by public employees are or should be prohibited and that injunctions should be granted to halt or prevent them." Moreover, the courts in most jurisdictions have rejected the notion that the party requesting injunctive relief must allege and prove irreparable harm as a condition precedent to the issuance of injunctive relief. For example, in *Board of Education of the City School District of the City of Buffalo v. Pisa*, 94 LRRM 2556 (N.Y. App. Div. 1976), the court stated:

> "Under the terms of the Taylor law the mere threat of a strike is sufficient to warrant the grant of the temporary restraining order. ... Nor was the alleged lack of factual allegations relating to the extent an irreparability of the harm fatal to the application. By its very nature a strike by public employees constitutes an 'irreparable injury' to the public order and welfare ...., and the issuance of a temporary restraining order under such circumstances evincing a threat of such injury is clearly justified. ..."

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[3] *Accord*, *Postal Workers v. United States Postal Service*, 356 F. Supp. 335 (E.D. Tex. 1972).

See also, Joint School District No. 1 v. Wisconsin Rapids Education Association, 234 N.W.2d 289 (Wis. S.Ct. 1975), where the court held that the mere fact that a school system could not operate and had to cancel athletic events and other school activities because of a teachers' strike constituted irreparable harm. Likewise relevant is the decision in *City of Rockford v. Local No. 413, IAFF*, 240 N.E.2d 705 (Ill. App. Ct. 1968), in which the court rejected the union's contention that the employer had to demonstrate and prove that irreparable harm would occur as a condition precedent to obtaining injunctive relief, stating:

> "... it is not necessary that the City wait until a fire occurs of such gravity to be beyond the control of the undermanned staff appointed by the union to receive injunctive relief."

While courts in most jurisdictions do not require a showing of irreparable harm, there are several jurisdictions which have established such a requirement. For example, in *School District v. Holland Education Association*, 380 Mich. 314, 147 N.W.2d 206 (1968), the Michigan Supreme Court refused to affirm an injunction issued by a lower court against a teachers' strike in the absence of a showing of violence, irreparable injury or breach of peace. The court reasoned as follows:

> "The courts have jurisdiction to restrain prohibited strikes by public employees, but are not required to do so in every case. ...
>
> "We here hold it is insufficient merely to show that a concert of prohibited action by public employees has taken place and that *ipso facto* such a showing justifies injunctive relief. We so hold because it is basically contrary to public policy in this State to issue injunctions in labor disputes absent a showing of violence, irreparable injury, or breach of peace. ...
>
> "The order of the Court of Appeals, affirming the circuit court is reversed. Hearing the matter, as we do *de novo*, we dissolve the temporary injunction hereinbefore issued, and remand to the circuit court for further proceedings. We suggest that such proceedings inquire into whether, as charged by the defendants, the plaintiff school district has refused to bargain in good faith, whether an injunction

should issue at all, and if so, on what terms and for what period in light of the whole record to be adduced." 147 N.W.2d at 210, 211.

In addition to the decision of the Michigan Supreme Court in the Holland case quoted above, the highest courts in Idaho,[4] New Hampshire,[5] and Rhode Island[6] have adopted similar criteria concerning whether or not injunctive relief should be granted.

A suit for injunctive relief is normally brought against the employee organization which is engaging in the concerted activity and it is normally brought against the officers of the organization both in their individual and representative capacities as a class action. The pleadings for injunctive relief would normally include (1) a complaint and petition for injunction and temporary restraining order, (2) notice of motion, and (3) a temporary restraining order. Competent legal counsel should be utilized to prepare the necessary pleadings in light of the applicable statutes and local court rules. To assist its attorney, a public employer should maintain a complete and up-to-date list of all of the officers of each employee organization, as well as their home addresses. This information is needed in order to draft the necessary pleadings, as well as to aid the process server in serving the pleadings on such union officers.

5. Practical Considerations To Take Into Account In Deciding Whether To Seek Injunctive Relief. The fact that strikes by public employees in 42 states are clearly illegal does not, however, automatically answer the question as to whether injunctive relief should be sought. Each strike must be analyzed on a case-by-case basis to determine whether injunctive relief should be sought. In this regard, there are at least seven considerations that should be taken into account.

First, how essential are the services of the employees who are striking? A strike by a city's fire personnel or police personnel may dictate the need to seek immediate injunctive relief. On the other hand, a strike by parks and recreation employees may not pose any immediate problems with respect to the health and safety of the city's citizens.

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[4] Oneida School District v. Oneida Education Association, 567 P.2d 830, 95 LRRM 3244 (Id. S. Ct. 1977).

[5] Timberlain School District v. Timberlain Educational Association, 114 N.H. 245, 317 A.2d 555, 87 LRRM 2015 (1974).

[6] School Committee v. Westerly Teachers Association, 299 A.2d 441, 82 LRRM 2567 (R.I. S. Ct. 1973).

Second, what are the chances of obtaining an injunction? Despite the illegality of a strike, whether an injunction will issue depends upon the manner in which particular courts apply the relevant standard. As a practical matter, factors such as the likelihood of settlement or political pressures may also affect the judicial decision.

Third, what is the long-term objective of the public employer? If that objective is to reach agreement with the union on terms that are fair and equitable and one which will permit the employer to operate with a reasonable degree of flexibility, the seeking of injunctive relief may not necessarily further that objective. In some situations, injunctions have been flouted openly by virtually the entire union membership. This in turn leads to contempt proceedings, including possible jail sentences for striking employees.

What frequently happens in these situations is that the jailed employees become instant martyrs and there is an intensification of the militancy on the part of the striking employees. It also occasionally leads to the anomalous situation of the public employer asking the court to release the jailed union leaders so that the parties can try to work out an agreement.

It is important to consider what impact the seeking and obtaining of injunctive relief will have on an employer's overall long-term objective. As just suggested, there may be some situations in which the furthering of that long-term objective would be adversely affected by seeking injunctive relief. On the other hand, there are clearly instances when such long-term objectives would be enhanced by obtaining injunctive relief.

In one situation in which we were involved in Illinois, the public works, parks, recreation, and sanitation employees went out on strike, but the municipality decided not to seek injunctive relief immediately. When the strike entered its fourth week, the municipality began to receive feedback from a significant number of employees that they would return to work if an injunction were issued. With the knowledge that an injunction probably would be obeyed, the city sought and obtain injunctive relief, and before the start of the next workday, an overall agreement was reached with the union. In retrospect, it was clear that the union wanted to reach agreement as quickly as possible after the injunction was issued so that it would not be faced with a situation where a significant number of the employees it represented were working while others remained on strike.

Fourth, what is the likelihood that the judge will attempt to become involved in the negotiations? Many public employers have found, to their dismay, that judges frequently inject themselves in negotiations when injunctive relief is sought. Thus, it is not at all unusual for a judge, unversed in collective bargaining, to become involved in an effort to try to mediate the dispute when a complaint for injunctive relief is filed.

For example, a few years ago, as a condition precedent to granting an injunction against a strike by teachers at the City College of Chicago, a judge ordered the parties to negotiate in his courtroom with a court reporter present so that he could supervise the negotiations. In deciding whether to seek injunctive relief, a public employer should review whether the judge will seek to mediate the dispute and whether such mediation would be helpful or harmful.

Fifth, what pressures will be exerted on the employees who go on strike? A consideration that frequently is overlooked is that a strike, whether legal or illegal, exerts pressure on the striking employees as well as on the employer. Since striking public employees lose wages for each day they are on strike, a strike very well may exert more pressure on the employees than on the employer, thereby facilitating overall agreement or settlement of the dispute. This is especially true if a public employer is prepared and has the ability to take a strike. It is important to keep in mind that the obtaining of an injunction does not necessarily resolve the underlying issues which led to the strike in the first place.

Sixth, if an injunction is obtained, will it be obeyed? If the injunction is not obeyed, then it is necessary to resort to contempt proceedings. Obviously, the penalties that may be imposed in contempt proceedings may adversely affect the public employer's public relations as well as relations with its employees.

Seventh, if the public employer would like to terminate some or all of the employees who engage in an illegal strike, it might be inconsistent to seek injunctive relief since such relief contemplates a return to work by the striking employees and a continuation of the employment relationship. In U.S. v. PATCO, 313 F. Supp. 181 (E.D.N.Y.), rev'd., 438 F.2d 79 (2d Cir. 1970), cert. denied, 402 U.S. 915 (1971), the trial court judge noted that it was "rather incongruous ... for the government to ask the court to compel the defendants to return to work and then immediately transfer them to different jobs and serve notice of inten-

this part was overturned.

tion to discharge."]

C. RECOVERY OF DAMAGES RESULTING FROM ILLEGAL STRIKE ACTIVITIES

Although there are only a few reported cases concerning the right of a public employer to sue for the damages caused by an illegal strike, this is an avenue of possible relief which should be explored under appropriate circumstances. A cause of action sounding in tort offers the greatest possibility for relief. Thus, in many jurisdictions a public employer may be able to state a cause of action by alleging an intentional infliction of damage that is without excuse or justification.

To date, the leading case is *Pasadena Unified School District v. Pasadena Federation of Teachers*, 140 Cal. Rptr. 41, 96 LRRM 2363 (Cal. Ct. App. 2d Dist. 1977), in which the court held that "(t)he conduct of an unlawful strike is itself a tort for which damages may be recovered." Similarly, in *Missouri v. Kansas City Fire Fighters*, 94 LRRM 2675 (Mo. Cir. Ct. 1976), the court held the State of Missouri could recover damages in the amount of $128,787.72 from the fire fighters union to reimburse the State for expenses incurred when National Guard personnel performed the duties of the striking fire fighters. In so ruling, the court stated:

> "The fire protection services provided by the Missouri National Guard were a direct and approximate result of the illegal strike by defendants and, therefore, the defendants must reimburse the State for the cost to the State in performing the duties which the fire fighters were by law required to perform."

In addition, the court awarded exemplary damages in the amount of $25,000.00. In so doing, the court said it hoped that the firefighters union "and other public employees responsible for protecting the safety and welfare of the citizens of the State will think twice before recklessly abandoning their obligations to their fellow citizens."

One other case deserves mention. In *Olshock v. Village of Skokie*, 411 F. Supp. 257 (N.D. Ill.), *aff'd.*, 541 F.2d 1254 (7th Cir. 1976), the court held that while the public employer had illegally discharged striking policemen by not according them due process and ordered that they be reinstated with backpay, it nevertheless held that the employer had a cause of action for damages against the individual strikers and that a total of $202,004.15 in damages attributable to the 59 striking police officers could be offset against the back wages awarded to the reinstated police officers. This decision likewise lends support to the proposition that public employers may recover damages caused by an illegal public employees strike.

The possibility of successfully pleading a suit for damages depends upon a careful analysis of both the facts and the law of the jurisdiction in question. For example, the Michigan Supreme Court has held that the public employee labor relations statute sets forth the exclusive remedy for public employee strikes and that a public employer could not, therefore, maintain an action for damages. Lamphere Schools v. Lamphere Federation of Teachers, 252 N.W.2d 818, 95 LRRM 2279 (1977).

In addition to the possibility of a damage suit being filed by an employer whose employees engage in an illegal strike, at least one court has held that several third party public employers stated a cause of action "for the damage done to their waters and beaches" as a result of an illegal strike against the New York City sanitation facilities which allegedly resulted in approximately one billion gallons of raw sewage being emitted into nearby waters. Caso v. District Council 37, AFSCME, 43 A.D.2d 159, 350 N.Y.S. 2d 173, 85 LRRM 2633 (1973). The court held that "the Taylor Law was not intended to provide the exclusive remedies in the event of a strike by public employees" and that "(A) common-law cause of action in nuisance would appear to be the appropriate remedy in the instant case."

D. INJUNCTIVE RELIEF AGAINST PICKETING OF RESIDENCES OR PLACES OF BUSINESS OF ELECTED OR APPOINTED PUBLIC OFFICIALS

Because public employee strikes are prohibited in the vast majority of jurisdictions, public employee unions frequently seek to pressure public employers in a variety of ways other than a direct strike by the public employees in question. One tactic that has been increasingly used is to picket the residences and/or places of business of elected officials. To counter this tactic, an increasing number of public employers have adopted ordinances prohibiting such picketing.

In Garcia v. Ray, 507 F.2d 539 (10th Cir. 1974), striking employees brought suit seeking to declare unconstitutional a city ordinance which made it unlawful "for any person to engage in picketing before or at the residence of dwelling of any individual." The challenged ordinance was enacted after picketing of the residences of the city's mayor and council as a result of a labor dispute over union recognition. Section 1 of the ordinance declared, among other things, that the "good order of the community require(s) that members of the community enjoy in their homes and dwellings a feeling of well-being, tranquility, and privacy" and "that the practice of picketing before or about residences obstructs and interferes with the free use of public sidewalks and public ways of travel" and "has as its object the harassing of such occupants" and "constitutes a nuisance." Section 2 of the ordinance prohibited any picketing before or about the residence or dwelling of any individual. Section 3 set forth a fine or imprisonment or both upon a conviction for violating the ordinance. In upholding the constitutionality of the ordinance, the court held that it constituted a "valid exercise of governmental power intended to ensure that mebers of the Artesia community enjoy in their homes a feeling of well-being, tranquility and privacy." The court observed that the ordinance prohibited picketing of residences only and did not "sweepingly prohibit any person in or upon any public place to picket." Finally, the court found it "most relevant" that "none of the business of the City of Artesia is conducted at (the mayor or council) members' places of residence."

In City of Wauwatosa v. King, 182 N.W.2d 539, 76 LRRM 2403 (1971), the Wisconsin Supreme Court upheld the conviction of a union representative for violating a similar municipal ordinance when he picketed the homes of school board members in connection with a labor dispute. In upholding the constitutionality of the ordinance, the court stated:

> "The Wauwatosa ordinance is clearly and sharply limited to picketing 'before or about the residence or dwelling of any individual.' It did not affect the earlier picketing in this case at school buildings in the city. It does not affect picketing, demonstrating or parading anywhere in the city except 'before or about the residence or dwelling of any individual.' This constitutes a limitation on the right to picket based not upon the nature or purpose of the picketing but upon the place of the picketing. ...
>
> "Decisions of the United States Supreme Court make clear that a prohibition of picketing, demonstrating and parading in a certain designated area is not constitutionally prohibited. ..."

While the ordinances that were upheld in the Garcia and Wauwatosa cases were limited to prohibiting picketing of individual residences, the reasoning in both cases would seem to support a similar prohibition of picketing of places of business of elected and/or appointed officials if the purpose of the picketing is not related to a labor dispute at such places of business and if public business is not normally carried out at such places of business. This latter proviso is important in light of the decision of the Louisiana Court of Appeals in Tassin v. Local 832, National Union of Police Officers, 311 So.2d 519, 90 LRRM 2216 (La. Ct. App. 1975), in which the court, in a 3-2 decision, held that the mayor and aldermen of a city were not entitled to an injunction prohibiting the city's police officers from picketing on the public sidewalks in front of their private businesses. The court stated:

> "The government of Westwego is embodied in its Mayor and Aldermen. The aldermen do not have government-provided offices at which they might be petitioned by peaceable assembly. They spend most of their time in their private business pursuits, at their private business places (where

> They necessarily conduct some of the city's business, at least receiving telephone calls and occasionally signing documents). If the police officers cannot peaceably picket on the public sidewalks at the aldermen's businesses, there is no place for effective petitioning of the Westwego government with peaceable assembly."

Significantly, the two judges who dissented stated that picketing of the private businesses of elected officials should be enjoined since such picketing could destroy the businesses in question.

E. DUE PROCESS CONSIDERATIONS IN TAKING DISCIPLINARY ACTION AGAINST PUBLIC EMPLOYEES WHO PARTICIPATE IN ILLEGAL STRIKES

1. General Considerations. In deciding whether to discharge or take other disciplinary action against public employees who engage in illegal strike activity, a public employer must take into account two legal considerations. First, the employer must comply with any requirements imposed by the Due Process Clause of the Fourteenth Amendment. Second, the employer must comply with all applicable statutes, ordinances and/or rules or regulations governing the dismissal or discipline of the employees in question. While the latter is beyond the purview of this Chapter, the requirements imposed by the Due Process Clause are discussed in detail below.

2. Requirements Imposed by Due Process Clause of Fourteenth Amendment

   a. Liberty and Property Interests Protected. The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law. ..." It is under the rubric of this clause that the courts, both federal and state, uniformly require public employers to provide employees who have a sufficient liberty or property interest with certain minimum procedural protections.

   In Board of Regents v. Roth, 408 U.S. 564 (1975), the Supreme Court noted that "the requirements of procedural due process apply only to the deprivation of interests encompassed within the Fourteenth Amendment's protection of liberty and property" and that "the range of interests protected by procedural due process is not infinite." At issue in Roth was whether a college professor who was not rehired following expiration of his one-year contract had either a liberty or property interest sufficient to require the college to give him a hearing when it declined to renew his contract. The Court held that he had neither the requisite liberty nor property interest. In rejecting his contention that he had a sufficient property interest to require a due process hearing, the Court stated that "to have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it," but rather must "have a legitimate claim of entitlement to it. ..."

   Although the Court in Roth found that the employee in question did not have a legitimate claim of entitlement, it did cite several instances in which an employee would have a sufficient property interest to require a due process hearing. Thus, the Court stated that employees dismissed during the term of their contract or professors dismissed from an office held under tenure provisions would have a sufficient property interest so as to require a due process hearing. Subsequent to the Supreme Court's decision in Roth, the courts have uniformly held that statutes which create tenure or permanent civil service status, or collective bargaining agreements that provide that an employee may be dismissed only for just cause, establish a property interest[1] and that such employees cannot be deprived of this property interest without being given the opportunity to have a due process hearing.

Whether a public employer's employees have a property interest in their jobs sufficient to invoke the requirements of the Due Process Clause is determined by reference to applicable state law. Bishop v. Wood, 96 S.Ct. 2074 (1976). If it is determined under applicable state law that the employees in question have a property interest in their jobs, then the public employer would be required to satisfy any due process requirements in taking disciplinary action against employees because of their involvement in an illegal strike.

On the other hand, the courts have repeatedly recognized that public employers "may choose to employ personnel without imbuing them with job tenure or civil service type rights of job continuity." McDowell v. State of Texas, 465 F.2d 1342 (5th Cir. 1971). In situations where the employee, in effect, is employed at will, the courts have held that there is no requirement for a procedural due process hearing as long as the employee's dismissal is not in retaliation for the exercise of a constitutionally protected right. For example, in Steelworkers v. Volker, 430 F. Supp. 966, 95 LRRM 2159 (N.D. Ala. 1977), the court upheld the termination without a hearing of university employees who engaged in a strike since the employees in question were "terminable at will" and, as a result, "... had no property interest in their jobs ... protected by the Fourteenth Amendment." Accordingly, the court held that the employees were not entitled to notice of termination or a hearing with respect to their termination.

Similarly, the courts have uniformly held that probationary employees do not have a property interest in their jobs which is protected by the Fourteenth

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[1] As the Court stated in Bishop v. Wood, 96 S.Ct. 2074 (1976), "A property interest in employment can, of course, be created by

Amendment. For example, in *Burnley v. Thompson*, 524 F.2d 1233, 91 LRRM 2033 (5th Cir. 1975), the court held that probationary fire fighters did not have a property interest in their job and could, therefore, be discharged without a hearing for participating in an illegal strike. Accordingly, if a public employer has established a probationary period and if probationary employees engage in an illegal strike, it would be legal for the public employer to summarily dismiss such employees without providing a due process hearing. Of course, the provisions of any *applicable* statute, ordinance, or rule or regulation would still have to be complied with in effecting any such termination.

It should be noted, however, that a probationary employee who does not have a sufficient property interest to require a due process hearing may nevertheless be able to establish a sufficient *liberty interest* to require such a hearing. For example, in *Roth*, the Supreme Court stated that if the contract of the non-tenured professor had not been renewed because of "any charge against him that might seriously damage his standing and associations in his community" or on the basis of the charge that "he had been guilty of dishonesty, or immorality," then "due process would accord an opportunity to refute the charge before University officials." In the same vein, the courts also held that when a violation of First Amendment rights is alleged, the reasons for dismissal or for non-renewal of an employment contract must be examined to see if the reasons given are only a cloak for activity or attitudes protected by the constitution. Significant for present purposes are the holdings of several courts that public employees who engage in illegal strikes do not have a sufficient liberty interest so as to invoke due process protection. *See*, *e.g.*, *Lake Michigan Federation of Teachers v. Lake Michigan Community College*, 518 F.2d 1091, 89 LRRM 2865 (6th Cir. 1975), *cert. denied*, 92 LRRM 2918 (1976); *Kirker v. Moore*, 436 F.2d 423 (4th Cir.), *cert. denied*, 404 U.S. 824 (1971); *Steelworkers v. Volker*, 430 F. Supp. 996, 95 LRRM 2158 (N.D. Ala. 1977).

b. *Due Process Hearing - Before or After Termination?* A public employee who has a sufficient liberty or property interest is entitled to a due process hearing. One of the major questions concerning such a hearing is whether it must be held prior to an employee's termination. In *Arnett v. Kennedy*, 94 S.Ct. 1633 (1974), a badly divided Supreme Court attempted to answer this question. The plurality opinion in *Arnett*, authored by Justice Rehnquist and concurred in by Chief Justice Burger and Justice Stewart, held that a non-probationary employee employed in the federal competitive civil service has a protected property interest but that "a hearing afforded by administrative appeal procedure after the actual dismissal is a sufficient compliance with the requirements of the Due Process Clause." (Emphasis added.) Justice Powell, in his concurring opinion with which Justice Blackmun joined, observed that the question of whether an evidentiary hearing must be accorded prior to an employee's removal "depends on a balancing process in which the government's interest in expeditious removal of an unsatisfactory employee is weighed against the interest of the affected employee in continued public employment." In concluding "that a prior evidentiary hearing is not required," Justice Powell noted that the Lloyd-LaFollette Act provided for thirty days' advance notice of the reasons for an employee's proposed termination, an opportunity to respond to the charges, and "an opportunity to appear personally before the official having the authority to make or recommend the final decision." Justice White also wrote a concurring opinion in which he likewise referred to these procedural protections which are afforded to employees in the federal competitive service prior to an actual dismissal.

These two concurring opinions raise some questions as to whether a majority of the Supreme Court would find that a full evidentiary hearing following termination was sufficient if most or all of the predetermination procedures afforded employees under the Lloyd-LaFollette Act were not present.[2] In several decisions issued subsequent to the Supreme Court's decision in Arnett, however, the courts have held that a pretermination hearing is not necessary as long as a full hearing is provided for at some stage in the proceeding. For example, the Fifth Circuit Court of Appeals, in Davis v. Vandiver, 494 F.2d 830 (5th Cir. 1974), held that a pretermination hearing was not required, observing:

> "Six justices (In Arnett) expressly concurred in the proposition that a post-termination hearing was sufficient to protect those interests meriting due process protection, whether those interests were in the nature of 'property' or 'liberty.'"

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[2] The Supreme Court's cryptic one-sentence decision in Oregon State Penitentiary v. Hammer, 46 L.W. 3320 (Nov. 14, 1977) per curiam), leaves this question somewhat up in the air. Although a bare five-member majority of the Court reversed a decision of the Oregon Supreme Court holding that due process required that a tenured employee receive notice of the charges against him, the proposed disciplinary

Accord, *Steelworkers v. Volker*, 430 F. Supp. 996, 95 LRRM 2158 (N.D. Ala. 1977); *Magri v. Giarrusso*, GERR No. 569, E-1 (Fed. Dist. Ct. E.D. La. 1974). Nevertheless, it might be prudent, and thereby perhaps avoid litigation on this point, to provide an employee with notice of the charge and a reasonable opportunity to respond to the charge prior to finalizing an employee's dismissal, even though a full evidentiary hearing is provided after the dismissal. *See Olson v. Regents of University of Minnesota*, 301 F. Supp. 1356, 1361 (D. Minn. 1969).

Where it is deemed necessary to take immediate action against striking employees and where termination is contemplated, a public employer might consider suspending the employees in question until completion of any necessary hearings at which time a final determination could be made as to whether the employees should be terminated. Since *Arnett*, the courts have uniformly held that there is no requirement for a due process hearing prior to such a suspension. *See*, e.g., *Burnley v. Thompson*, 524 F.2d 1233, 91 LRRM 2033 (5th Cir. 1975); *Olshock v. Village of Skokie*, 411 F. Supp. 257 (1976), *aff'd.*, 541 F.2d 1254 (7th Cir. 1976) ("due process did not require hearing prior to the Board's suspension of the plaintiffs during the time that charges against them were pending before the Board").

c. *Right Of Legislative Body To Make Decision To Terminate*. Prior to the Supreme Court's decision in *Hortonville Joint School Dist. No. 1 v. Hortonville Education Ass'n.*, 96 S.Ct. 2308 (1976), there was considerable confusion as to the degree of impartiality required of the body making the ultimate determination on whether or not public employees should be terminated or otherwise disciplined for engaging in strike activity. In the *Hortonville* case, however, the Supreme Court unequivocally held that the school board's "prior role as negotiator does not disqualify it to decide that the public interest in maintaining uninterrupted classroom work required that teachers striking in violation of state law be discharged." In so ruling, the Court stated:

> "It was not an adjudicative decision, for the Board had an obligation to make a decision based on its own answer to an important question of policy: what choice among the alternative responses to the teachers' strike will best serve the interests of the school system, the interests of the parents and children who depend upon the system, and the

> interests of the citizens whose taxes support it? The Board's decision was only incidentally a disciplinary decision; it had significant governmental and public policy dimensions as well.
>
> "Permitting the Board to make the decision at issue preserves its control over school district affairs, leaves the balance of power in labor relations where the state legislature struck it, and assures that the decision whether to dismiss the teachers will be made by the body responsible for that decision under state law."

In light of the Supreme Court's decision in Hortonville, it is clear that a city council or county board can make the decision as to whether public employees who participate in an illegal strike should be terminated or otherwise disciplined, even though such council or board has previously been involved in the negotiations that preceded the strike. See Steelworkers v. Volker, 430 F. Supp. 996, 95 LRRM 2158 (N.D. Ala. 1977). As a precautionary measure, however, an effort should be made to ensure that the council or board members participating in such decisions do not have a personal or financial stake in the decision that might create a conflict of interest or have a personal animosity towards any of the employees against whom disciplinary action is directed.

d. Other Requisites Of A Due Process Hearing. Where a due process hearing is required, the courts have stated that it must be at a meaningful time and in a meaningful manner. While the courts ritualistically state that the nature of the hearing necessarily is related to the circumstances involved, the courts are in general agreement as to what due process normally requires.

First, due process requires that the employee receive notification of the reasons for his dismissal far enough in advance to enable him to prepare for the hearing.

Second, due process requires that the hearing include the right to present favorable witnesses and to confront and examine adverse witnesses. See, e.g. Arnett v. Kennedy, 94 S.Ct. 1633, 1651 (concurring opinion of Justice Powell).

Third, due process requires that the employee has the right to be represented by counsel if he so desires. *See, e.g.*, *Buggs v. City of Minneapolis*, 358 F. Supp. 1340, 1344 (D. Minn. 1973).

Whether the hearing must be held in public is not clearly resolved. In *Dougherty v. Walker*, 349 F. Supp. 629, 645-46 (W.D. Mo. 1972), the court held that due process does not require that the hearing be open to the public. The court in so ruling, however, noted that a transcript of the hearing was made. On the other hand, in *Moore v. Student Affairs Committee of Troy State University*, 284 F. Supp. 725, 731 (M.D. Ala. 1968), the court held that "hearings should be open to the press when this is possible without interference with the orderly operation" of the in-situation in question. *Accord*, *Randall v. Toll*, 344 N.Y.S.2d 712, 74 Misc.2d 315 (1973). It would seem, however, that where a state statute specifically permits such hearings to be held in executive session, the courts would not find that due process requires a public hearing, especially if the employee is permitted to be represented by counsel and has an opportunity to have a transcript of the hearing. It should be noted again, however, that this issue has not been finally resolved.

e. *A Final Caveat Concerning Due Process Requirements*. Although the courts in recent years have resolved some of the questions concerning when and under what circumstances an employee must be given an opportunity for a hearing with respect to a dismissal or discharge, there are still a number of gray areas. It is, therefore, incumbent upon public employers to not only carefully review their dismissal and termination proceedings to see whether they comply with what the courts now require, but to keep up to date with respect to court decisions in this area.

One final word. The foregoing discussion concerns the due process requirements imposed by the Fourteenth Amendment of the United States Constitution; it does *not* cover any due process requirements that may be *imposed* by virtue of a state constitution. While in most jurisdictions the due process provisions contained in a state constitution do not exceed those imposed by the Fourteenth Amendment, a few state courts have interpreted their due process provisions more expansively. Thus, in these few jurisdictions the due process requirements imposed by a state constitution are stricter than the requirements imposed by the Fourteenth Amendment. Accordingly, any public employer who is considering taking disciplinary action against public employees for engaging in an illegal strike should ascertain whether there are any state due process requirements over and above those imposed by the Fourteenth Amendment.

PART III

ESSENTIAL INGREDIENTS OF AN EFFECTIVE MANAGEMENT ANTI-STRIKE PLAN

The following is a brief overview of what management can and will consider in their anti-strike plan. You must consider that all of these management techniques and/or recommendations will not apply to every situation.

Overview

Chapter 1 considers the appointment of a strike committee which has the administrative responsibility for directing and coordinating the formulation and implementation of a strike contingency plan. Practical questions such as selecting the members of the committee and the committee's relationship with the negotiating team and elected officials are examined. Establishing a strike headquarters is also reviewed and various suggestions are offered.

Chapter 2 sets forth a general framework and specific guidelines for identifying and establishing of priorities for those services to be performed or suspended during a strike. The Chapter emphasizes that the public employer must be realistic in determining what services "must" be performed.

Continuing operations in the event of a strike is the subject of Chapter 3. A struck employer is an employer faced with a reduction of resources, most notably its manpower. Chapter 3 explains how a public employer can increase its manpower and use that manpower in the most efficient manner possible.

Experience indicates that public sector strikes are becoming increasingly more militant. A public employer may no longer assume that a strike will be restricted to peaceful and essentially passive picketing. Therefore, Chapter 4 explains how an employer may determine its security requirements and considers what steps should be taken to protect the employer's property and personnel in the event of a strike.

Chapter 5 cautions the public employer that a review of its pay and personnel policies is necessary before a strike to insure that those policies do not: (1) result in the employer's subsidizing a strike against itself; or (2) prevent or inhibit the employer from effectively coping with a strike or with striking employees. Frequently encountered problems are highlighted and solutions are offered to the reader.

III.3

CHAPTER 1

THE STRIKE COMMITTEE

INTRODUCTION

Perhaps the first step in preparing for a strike is the appointment of a strike committee. This committee should be granted administrative responsibility for directing and coordinating the formulation and implementation of a strike contingency plan. Because of the nature of the committee's role, certain initial observations are in order.

The strike committee should be a result-oriented committee. Its members must be imaginative and capable of acting decisively under the most difficult of conditions. They must have the authority to make and implement their decisions. Clearly, there is little room for "buck-passers" and procrastinators on a strike committee. Given these basic considerations, the following guidelines for the committee are offered.

A. Selecting The Committee

1. Size And Basic Duties Of The Strike Committee

One of the first questions is the size of the strike committee. Experience strongly suggests that the actual strike committee should be kept relatively small. Smaller strike committees, with four to six members, more readily develop a consensus, have a greater sense of direction, and are capable of acting more decisively. The assignment of specific responsibilities is accomplished more easily with a small committee.

A chairman for the strike committee must be selected. Normally, the employer's chief administrative officer or elected official will make the selection. Thereafter, the chairman and the chief administrative or elected officer will generally select the remaining members of the committee. Experience suggests that legal counsel should either be on the committee, or actively consult with it.

The size and specific composition of the committee will, of course, vary from jurisdiction to jurisdiction. A fairly typical committee arrangement would be as follows:

a. Chairman (appointed by chief administrative or elected officer);

b. Director of personnel;

c. Department head(s);

d Legal counsel; and

While the authors disagree with the conclusions concerning membership by a representative of a negotiating team (as discussed in the following section), the position of this large jurisdiction is well worth noting. Finally, a smaller jurisdiction (under 50,000 population) has structured its strike committee in anticipation of a general maintenance employees strike as follows:

"A. Strike Organization.

"1. In the event that a strike occurs or is imminent, the following city employees will comprise the Strike Committee and will assume the tasks and responsibilities listed below:

"City Manager. The City Manager is the strike coordinator and will continue his normal functions and will also be responsible for coordination with other metropolitan area communities. All communications to the union should be through him.

"Assistant City Manager. The Assistant City Manager will act as assistant strike coordinator as directed by the City Manager and will assume other alternative assignments as necessary. All questions regarding disputed actions of pickets, work procedures, etc. should be referred to him.

"Director of Public Works. The Director of public works shall act as action director. He shall review all special expenditures, shall have authority to assign work schedules and priorities to assure delivery of essential services. He shall also assist in the continuous and partial operations as required.

"Superintendent of Streets and Parks. The Superintendent of Streets and Parks shall be on 24 hour call for surface service requirements. He shall organize such assigned personnel as may be required or as are directed by the Public Works Director.

"Superintendent of Utilities. The Superintendent of Utilities shall be on 24 hour call for sub-surface service requirements. He shall organize such assigned personnel as may be required or as are directed by the Public Works Director.

It is the author's preference that a member of the negotiating team be appointed to the strike committee, so that the negotiating team will be aware of any discussions of the strike committee which might impact on negotiations. If a member of the negotiating team is not on the strike committee, then legal counsel will often serve as the liaison between these two groups. Whatever steps are taken, it is clear that the negotiating team must be informed in advance of any actions taken by the strike committee, and vice-versa. Close coordination between these two teams is essential and surprises must be kept to a minimum. It must be remembered that the negotiating team is apt to be pre-occupied with negotiations during the strike and, therefore, its members may be unavailable to implement the strike plan. The input from the strike committee and their participation in the coordination and planning, however, is deemed essential and always should be encouraged.

C. Interface With Elected Officials

Elected officials must be confident that their administrators are prepared to respond to a strike or to meet a strike threat. It is the strike committee's responsibility to insure that the elected officials are kept informed of pre-strike preparations which are underway. It is generally agreed that elected officials should not be involved in the detailed "nuts and bolts" preparation of a strike contingency plan, although individual situations may require their involvement. However, certain strike counter-measures -- often contained in the strike contingency plan -- may require approval by the elected officials in advance of a strike.

There is considerable disagreement as to how detailed the pre-strike report should be which is given to the elected body. This question becomes particularly difficult if an elected official(s) is suspected of being a "pipeline" to the union. Obviously, management does not want its detailed strike plan falling in the union's hands. Unfortunately, there is no simple answer to this problem and each situation must be handled on its own merits and with great care. As one NPELRA member wrote when transmitting his jurisdiction's plan to the authors:

> "(Our plan) is truly a neophite among strike plans because it has not even been submitted for approval to the county's Board of Commissioners."

Frankly, we would counsel against such a wide-spread distribution of the plan. Practical political considerations may, however, dictate that the plan be reviewed personally -- in the office, by one or more officials of the elected body. Frankly, while the committee must keep elected officials aware of all relevant developments during the strike, it is not recommended that the actual strike plan itself be reproduced and submitted to a legislative body for prior approval. The possibility of a breach of security is simply too great!

It is vitally important, no matter which approach is used, that a detailed list be assembled of supplies and materials which must be provided for the emergency strike headquarters. A timetable should also be established as to when, and in what quantities, these matters should be delivered to headquarters. Security must, of course, be preserved at all times. Finally, any strike plan should attempt to detail, in the greatest specificity possible, the circumstances under which the emergency strike headquarters will be utilized and the official(s) with authority to activate the use of such headquarters.

III.11

The services -- both internal and external -- which a jurisdiction considers to be essential, and which must be provided within the first few hours or days of a strike, will vary from jurisdiction to jurisdiction. The following is a list of those services listed as "essential" in one or more of the strike plans submitted to the authors:

- **Fire Suppression**
- **Rescue Squad**
- **Bomb Squad**
- **Crime Suppression**
- **Prison Guard Service**
- **"Emergency Services"**
  - ***Snow removal, salting and sanding**
  - ***Sanitary sewer emergency repairs and removal of stoppages**
  - ***Flood control**
  - ***Emergency barricading**
  - ***Street repair of hazardous potholes**
  - ***Grass & weed mowing at hazardous intersections**
  - ***Maintenance of traffic signals**
  - ***Removal of dangerous trees or limbs**
- **Sewage treatment**
- **Pumping & Purification**
- **Generation of Electricity**
- **Maintenance of critical equipment**
- **Feeding animals (Zoo/Pound)**
- **Gas**

sweltering summer may receive a very low operational or economic priority but be absolutely "essential" politically (and practically).

In determining service priorities, one crucial fact must be recognized. The public employer must be realistic in determing what services "must" be performed in the event of a strike. A public employer who attempts to continue too many "essential services" runs the very real risk of being able adequately to provide none. Inextricably intertwined with the question: "What services must be performed in the event of a strike," is the question: "What services can be performed in the event of a strike," which is the subject of the following chapter.

E. Consider The Manner In Which The Service Is Provided

Experience indicates that even if it is determined that a particular service is to be performed, the manner in which it is to be performed during the strike may be very different from the manner in which the service was performed in the past. To take one obvious and common example, consider refuse collection and disposal. Most public employers have found it necessary to provide for refuse disposal in the course of the strike but have infrequently been able to maintain a normal schedule of refuse collection. One alternative has been to have the public bring their refuse to garbage trucks parked in specified locations or else directly to landfills. Another has been to distribute special garbage bags. Other possibilities are available, as well. The point is, in planning for a strike, the strike committee and its staff may well have to improvise in the manner in which even routine work is to be performed. A major suggestion: be creative!

F. Role Of Department Heads

Department Heads should be required by the strike committee, as part of their strike preparation, to provide detailed lists of the respective services and functions within each department which, in the department head's view, must continue uninterrupted within the first hour, day or week of the strike (see Appendix 2-A). Similarly, each department head must be solicited to provide detailed information concerning the manner in which each such service will be provided given the assumption that manpower will be limited and, perhaps, supplies cut off. These reports carefully should be studied -- and supplemented well in advance if necessary -- so that rapid, meaningful decisions can be made by the strike committee in the event a strike becomes a reality. Tentative priorities should be established now, before the strike occurs. These priorities can always be reviewed later, in light of specific strike circumstances.

" -- Prepare plan for notifying striking employees in writing of disciplinary action, if and when a decision is made. This type of notice must be by registered mail or other verifiable process.

" -- Notify other agencies, vendors, carriers, etc. as to the individual who will communicate with them regarding shipping schedules or other conditions during strikes.

" -- Advise all supervisors to keep accurate records of all strike-related incidents, contacts with union officials, citizens' complaints, etc.

" -- Design a system to handle phone contacts with employees and to log information on reported absences.

"This checklist is not inclusive, nor in priority order, but generally covers the areas where problems frequently arise during strike situations."

There are many considerations for the strike committee to contemplate as it makes recommendations concerning manpower. The considerations may differ depending upon whether internal or external sources are involved.

1. Internal Sources

a. Managers And Supervisors From The Struck Operation

In most instances, the managers and supervisors of the struck operation constitute the employer's most valuable internal resource in combating a strike. Familiar with operations, they can likely perform many duties themselves, while also training others. Additionally, they can coordinate the performance of the operation's functions. Unfortunately, some employers have agreed to include some, many, or virtually all supervisors and/or managers within the bargaining unit, thereby effectively depriving themselves of this valuable resource. This is particularly common -- and unfortunate -- with respect to police and fire departments.

If managers and supervisors are excluded from the bargaining unit, it is usually safe to assume they will be available to work in the event of a strike. Indeed, in most jurisdictions they can be required to work should a strike occur. If they are included in the unit, the employer will have to identify those supervisors upon which he believes he can rely should a strike occur.

(1) A Skills Inventory Should Be Taken

In advance of a strike, a skills inventory of supervisory personnel should be taken so the employer can determine what struck work to assign in the event of a strike. Cross-training, considered more fully below, may also be in order. The consequences of using managers and supervisors to perform struck work are usually minimal, although there may be some hard feelings between supervisors and employees which reach the surface after the strike, especially where the supervisors are included within the bargaining unit.

(2) Warnings For Supervisors Who are Union Members

Supervisors who are members of the union should be warned that the union may attempt to fine or otherwise discipline them if they work during a strike. Generally, supervisors may be informed

In our experience, cross-training programs are not always practical. To the extent the unit employees recognize that cross-training is occurring and constitutes employer strike preparation, it will obviously be resented. It is conceivable, moreover, that in highly organized departments cross-training may in and of itself provoke a work stoppage. Further, it may constitute a violation of the striking union's contract if the contract contains a prohibition against work being performed by persons other than unit employees.

If cross-training is to be considered, perhaps the most diplomatic time to conduct cross-training is well in advance of the contract's expiration date. The employer might justify such training as preparing others to assist "in the event of natural disaster or other emergency." Because of the risk involved in cross-training, an employer may want to restrict it to supervisors and managers from outside the bargaining unit.

Interestingly enough, one Midwestern jurisdiction reports that it not only cross-trains, but it sets aside one or two days a year for actual strike drills; that is, existing employees are sent home early and supervisory "replacements" from other departments are called in to perform the work for the remainder of the day. This experience is then followed by an evening picnic and get-together where management identity is further solidified. The employer reports these strike drills strengthen its supervisors' ability and confidence to perform the work in question, it aids in future strike planning, it builds confidence and, apparently, it engenders within the union a healthy respect for the employer's ability and resolve to meet a strike should one be called.

(3) Adverse Consequences Of Utilizing Non-Bargaining Unit Personnel

There are -- on balance -- few serious adverse consequences of using supervisors and managers from other departments to help in a strike situation. The same, to a lesser extent, is generally true of using non-union rank and file employees, especially office clerical employees, to help out in a strike situation. Serious problems may arise, however, if the employer plans to use members of another unionized department or operation to perform struck work. The use of such

2. External Sources

a. Other Governmental Units

(1) Mutual Aid Pacts

Well in advance of a strike -- today is not too early -- the strike committee should explore the possibility of entering into a mutual aid pact(s) with a similarly situated (and, hopefully, unorganized) employer(s) to provide assistance in the event of a strike. Mutual aid pacts are not without their problems. In a number of situations, public employers have found themselves in rather desperate shape when fellow pact members renege on their pledges when confronted with a call for aid in an actual strike situation. The committee cannot ignore this possibility in its pre-strike planning.

Mutual aid pacts can be very effective, as evidenced by organized labor's bitter opposition to such arrangements. For example, in a recent monthly newsletter, the International Association of Firefighters told its members:

> "All of our federal and city locals should look at the mutual aid arrangements between government installations and the city or county fire departments and try to get these agreements changed so that the collective bargaining techniques of our municipal locals are not compromised by governmental use of fire personnel as strike breakers during labor disputes. Federal locals should make a specific effort to bring this point up at future negotiations."[1]

b. Higher And Lower Levels Of Government

The committee should also determine what assistance can be provided (and for how long) by higher and lower levels of government. With respect to strikes by certain types of public employees, police and fire, for example, assistance from other governmental units may be crucial. For example, many municipalities have reported favorably concerning assistance received from state and county police in the face of a strike by local police. Some communities maintain police and fire auxiliary forces staffed by volunteers which can be used in such a situation. Police and firefighter unions often object strenuously to the existence of such forces. Their stated objection is usually based upon the asserted "low quality" of such forces. From time to time, however, officials of those organiza-

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[1] International Firefighter, October, 1977, at p. 15.

d. New Employees: Strike Replacements, Both Temporary And Permanent

The utilization of temporary or permanent replacements for striking employees is used with some frequency in the private sector. To date, replacement has been less common in the public sector though many Boards of Education are successfully using replacement teachers in strike situations.

The use of temporary replacements -- particularly students on vacation -- poses relatively few problems other than increasing the possibility of threats, violence and related picket line confrontations. Of course, certain licensing and/or civil service requirements may delay or preclude the use of temporary (or permanent) replacements in certain circumstances and these should be reviewed. Also, applicable state labor laws should be reviewed to determine what, if any, restrictions govern the use of, or advertisement for, temporary or permanent replacements during a strike.

The employment of permanent replacements presents somewhat different considerations. Impacting upon the vital interests of both the striking employees and the union, the employment of permanent replacements -- if they really are permanent -- may close the negotiating door to a compromise settlement. An employer electing to employ permanent replacements is "at war"; He can certainly expect to be met with charges of "union busting", or worse. Violence is also a common response where people's jobs -- their economic life or death -- are truly at stake.

Notwithstanding these considerations, however, the hiring of permanent replacements for strikers is a legitimate response to a strike and sometimes the only response available to bring a strike to a conclusion. In considering this option, the employer should be aware of the very serious nature of this step. Further, before permanent replacements are hired, it is usually best to give strikers one last opportunity to return to work before hiring such replacements. Finally, before hiring permanent replacements, the situation should be completely reviewed with experienced counsel and detailed advice received.

III.25

APPENDIX 3-A

CHECKLIST: Department Priorities, Supplies and Materials Distributed To Department Heads

"A. Department Priorities

"1. Prepare manpower inventory, supervisory personnel, and the number needed to maintain an emergency level of services in each section, division or department.

"2. Identify essential and emergency jobs to be done in each section and the minimum number of workers required to do each job.

"3. Match names of each available person to do the job they are qualified to perform. (When essential tasks cannot be performed with available personnel, prepare arrangements for necessary permanent, transfers, subcontracting or recruiting of replacements.)

"4. Review safety requirements for operating certain equipment with a smaller complement of men than normally required.

"5. Procure necessary licenses for supervisors and other employees who will operate equipment.

"6. Outline the manner in which you will provide food, bedding and transportation for employees who will work and means of contact by their families in case of emergency.

"7. Provide for safety of working employees.

"B. Supplies and Materials

"1. Make inventory of essential supplies and materials and determine consumption rates. Compute requirement on assumption that most adverse conditions will prevail.

"2. Store up essential supplies that are non-perishable.

"3. Advance delivery time of supplies or schedule deliveries when pickets are less likely to be present in force. (Early morning or evening.)

"4. Lease warehouse for supplies that cannot be delivered to agency.

"5. Use disposable materials such as paper cups, plates, towels, etc."

CHAPTER 4

SECURITY REQUIREMENTS AND CONSIDERATIONS

INTRODUCTION

The strike committee must determine the steps to be taken to protect the employer's property and personnel in the event of a strike. It is no longer prudent or reasonable for a public employer merely to depend upon a court injunction to maintain order, preserve the peace, or protect employees, management personnel, and the employer's property in the event of a strike. An injunction may not be sought; it may not be granted; or it may not be obeyed. The strike committee cannot ignore the possibility, moreover, that local law enforcement personnel will passively or perhaps actively support the efforts of the strikers. Detailed security arrangements, then, are an important feature of any realistic strike plan.

A. Assessing Security Requirements

Public sector strikers are becoming increasingly more militant. Such strikes now involve more than peaceful and essentially passive picketing. Rather, striking employees (or hired "stranger-strikers") are regularly engaging in such improper activities as harassment of non-strikers, violence to persons and property, and/or sabotage at the workplace.

While many employees and their unions have not considered the use of such tactics, an employer cannot afford to ignore the possibility that at some point serious strike misconduct will occur. Therefore, the strike committee must attempt to assess the employer's vulnerability to such harassment, violence or sabotage, and plan accordingly.

The committee should consider: (1) what tactics are likely to be employed by the union and its supporters; and (2) what steps must be taken by the employer successfully to counteract such tactics. The security which must be provided can be broken down into two segments. First, security must be provided for people. Secondly, security must be provided for property.

1. Security For People

It is exceedingly important that those individuals who continue to work during a strike be made to feel reasonably safe and secure. Unions depend upon fear perhaps more than any other factor to "convince" employees not to work during the course of a labor dispute. For this reason, any strike plan must make provision for visible security arrangements to protect at least the following classes of people:

a. Elected officials;

b. Managers, supervisors and those employees of the jurisdiction who choose to work during the strike;

b. To commit (usually minor) damage to the employer's property during the strike.

The strike committee will have to formulate plans to protect against these two possibilities.

Experience indicates that sabotage is the most difficult tactic with which an employer must deal. During the course of its strike planning, the committee should require every department head to compile a detailed list of its "key" machinery and equipment: that is, machinery or equipment necessary to keep the department functioning in the event of a strike or other emergency situation. Small items, such as keys, valves and switches, are particularly susceptible to sabotage. Arrangements should be made for its protection or of its repair or replacement in the event that it should be damaged, destroyed or removed. A good example occurred during a strike some years ago by persons tending bridges in a large, metropolitan city. Apparently, the bridge tenders, prior to engaging in a strike, placed the bridges leading to the city in their locked and upright position. The tenders then walked off the job and, unfortunately for the city, took with them the keys to the bridge locks. Many frantic hours later, after traffic had backed up for miles and miles, and untold citizen inconvenience and worse had occurred, substitute keys finally were located. The moral of the story: provide for extra keys and related "key" items.

3. Special Security Problems

A discussion of a few of the more important security problems may be helpful. One of the most difficult security requirements is insuring non-strikers safe ingress and egress from work. Thus, the committee will have to determine how non-strikers will get to and from work. The organization of car pools may be helpful. The possibility of a "convoy system" should also be considered; in extreme situations, public employers have provided separate bus service.

The committee should consider whether access to a particular office building should be limited to certain specified entrances in order to provide greater security for employees coming to work. While limited access may make the union's job simpler, permitting it to marshall its pickets at one or two key locations, it also may ease the task of the security forces. A similar tactic may be appropriate with respect to the delivery of supplies.

The protection of the property of non-strikers, is -- like it is with strikers -- a common problem, particularly as to their automobiles. The vandalization of non-strikers' automobiles is also quite common. Sand, sugar or water in employer may take to improve its position in the event a strike should occur. A number of public jurisdictions indicate that one or more of the following steps should be adopted:

1. Law enforcement officers should be provided practical training relating to strike picket line activity. Training of personnel who may be assigned to picket line duty is helpful to avoid the possibility of violence or misunderstanding which can occur when last-minute or spur of the moment decisions are forced upon law enforcement officers in a tense picket line situation.

2. Periodic training and briefing sessions should follow the initial training session, so that the jurisdiction is not caught unprepared.

3. Law enforcement officers must be advised of their duty to maintain passageways to and from the site being struck.

4. In dealing with strikers and picketers, picketing guidelines should be established and transmitted both to the police and to the picketers.

5. Employees who are crossing picket lines to proceed to work should be afforded visible police protection.

6. Pickets must be limited in number and to their proper picketing areas. Driveways, access sidewalks, and doors to buildings being picketed should never be blocked by unauthorized persons or equipment.

Additionally, the strike committee should insure that police assigned to picket line activity are given specific instructions on handling pickets. These instructions should contain, among others, the following admonitions:

1. Public access areas should always be kept open. Make certain that at all times, pickets remain in designated areas. Driveways, access sidewalks and doors to buildings being picketed should never be blocked.

2. The use of force on picket lines must be avoided. Violence results in retaliation.

3. Whenever possible, provide pickets with warning that if prohibited activity continues, arrests will occur.

4. Maintain accurate records of any and all incidents on the picket line.

5. Pickets should not be permitted to trespass on the employer's property.

a. They should at all costs avoid arguments or shouting matches with pickets.

b. They have a right to enter and leave the employer's facility without molestation, and the employer will take all necessary steps to protect that right.

c. Vehicles should be driven slowly and carefully across the picket line.

d. If their passage is blocked or if they are threatened, and security forces are not available, they should not attempt to enter work. Instead, they should write down a description of what happened and what was said, including the names (or descriptions) of the persons responsible. Also, they should obtain names of other employees as witnesses.

e. They should immediately report to the supervisor any attempts to interfere with their ingress to or egress from the employer's facilities.

For a further discussion of the rights of non-striking employees, and of the legal steps they may take to avoid discipline by their union should they decide to work rather than strike, see Part II of this Manual.

4. Telephone Lines And Crank Calls

Strikers, as part of their disruptive activities, occasionally will attempt to tie up the employer's telephone lines. For this reason, it is often advisable to have several direct lines with unlisted numbers installed prior to an anticipated strike, especially at strike headquarters and other key locations.

Additionally, crank calls -- both at the office and at home -- are a common form of harassment. The likely recipients of such calls, particularly the elected officials and members of the negotiating team, should be advised to consider securing unlisted numbers. They should be informed, further, that the best way to deal with a crank call is simply to hang up.

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An incidents log must be maintained throughout the strike, containing reports relating to strike misconduct. As a minimum, each incident report should contain the following information:

a. the date and time of the incident;

b. the location of the incident;

APPENDIX 4-A

SECURITY CHECKLIST

_____ Arrangements for visible uniformed police protection (public agency and/or private security) for non-strikers crossing picket lines, agency buildings and facilities (key locations on an around-the-clock basis) and homes of top agency officials.

_____ Develop a list of control valves, switches, control centers, alarm boxes, communications equipment and other critical installations (for use by security personnel).

_____ Plan a system of identification passes for operating personnel who will be authorized to enter facilities containing such critical equipment.

_____ Have available in the strike headquarters duplicate supplies of keys to facilities, equipment and vehicles.

_____ Have standby arrangements with locksmith service (to change locks), emergency plumbing service, garage and window repair services.

_____ Security planning should emphasize such sensitive locations as picket lines, entrances to key agency buildings, strike headquarters, communications center, agency public utility facilities and employee parking lots.

_____ Arrange to collect from employees going on strike all municipal equipment (keys, tools, etc.)

APPENDIX 4-C

INCIDENT LOG

Date ____________________ and time ________________.m. of incident.

Location of incident ____

Name of individual reporting incident (print):

____

Name(s) of other witnesses (print): ______________________________

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Detailed description of incident (be sure to name all individuals involved):

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Report prepared by: ____
(Signature)

Supervisor: __________________________________
(Signature)

Date of Report: ______________________________

strikes and to strike-related conduct must also be understood. Involvement of competent counsel in this review is, of course, vital to its success.

B. Policies Affecting Non-Strikers

The committee's review of personnel and pay policies should consider the impact of such policies upon non-striking employees. The key is to determine what policies, if any, might inhibit the effective use of non-strikers in combating a strike. Two policies which merit particular review are those relating to: (1) temporary transfers; and (2) overtime.

As an example, consider the jurisdiction's practice of administering overtime. As a matter of policy, many employers attempt to distribute overtime on a voluntary basis and also attempt to provide for a certain amount of notice before overtime is offered or assigned. Exceptions for emergency situations such as a strike must be made in the employer's written policies -- or the employer may end up hamstrung during a strike. Similarly, where an authorization of overtime requires prior approval from the elected body, such authorization, obviously, should be secured well in advance.

With respect to overtime, it has been suggested by some experienced administrators that managerial employees and other individuals normally exempt from overtime payment be paid overtime for their efforts during a strike.

If some non-strikers are also members of other collective bargaining units, those applicable labor agreement(s) must be reviewed for possible notice or related limitations. Even if there are no contractual limitations, it is generally unwise to use members of other unions as replacements for strikers, as discussed in Chapter 3.

Finally, the strike committee should also consider the question of how non-striking employees are to be handled in the event there is insufficient work available due to the effects of the strike. Procedures should be drafted well in advance, to send workers home or place them on temporary layoff status in the event there is insufficient available work. Lines of decision-making authority to effectuate these procedures must also be established.

5. No leaves of absence, with or without pay, will be granted during the period of employee work stoppage, except as provided for under Nos. 3 and 4 above.

6. During periods of strike at facilities that are open to serve the public, pickets and other persons determined to have no legitimate business in the facility in question should be restricted to designated lobby and adjoining restroom areas only. If these individuals become unruly, they should be ejected from the area and prohibited further access to these areas."

CHAPTER 6

COMMUNICATIONS

INTRODUCTION

Two separate items are considered in this chapter. Considered first are problems of communication as they relate to the internal mechanics of implementing the strike contingency plan. Considered second, and at greater length in appended materials, are problems relative to the effective communication of the employer's position to the public, to the strikers, etc. in the event of a strike.

A. Internal Communications As An Essential Element Of The Implementation Of A Strike Plan

In order effectively to coordinate and implement the jurisdiction's counter-strike activities, a procedure must be established by the strike committee for internal communications both prior to and during the strike. For example, the strike committee must designate the individual(s) who will trigger the operation of the strike contingency plan and the general conditions under which the plan will become triggered. The committee must also determine such questions as how the jurisdiction's personnel (managerial, supervisory, bargaining unit, and non-bargaining unit) will be notified:

1. that the strike plan and related emergency procedures are in effect; and

2. whom to call and where to call to solve strike-related problems, report strikers' conduct, receive further instructions, and so forth.

These and other questions must be addressed in the strike plan. The strike committee will undoubtedly wish to maintain home and office (work station) telephone numbers of all personnel for these purposes. Department heads and supervisors similarly should have complete telephone lists and related information. Some employers have gone so far as to issue "beepers" to key personnel in the event of a strike, in order to insure rapid internal communications. A simple but comprehensive "telephone tree," established in advance, may also prove helpful in an emergency situation when time is short and events are particularly hectic.

Each jurisdiction's internal communications system will, of course, differ. Bitter experience indicates, however, that such a system must be established by the strike committee well in advance of a strike if the jurisdiction is to have the slightest chance of successfully providing services during a work stoppage.

complete and logical development and distribution of information by the employer. Media deadlines can more readily be met and information can be presented in its proper order. Third, centralized control should insure that all proposed statements are reviewed in light of all relevant circumstances, particularly the impact which any statements might have with respect to negotiations. It is important that public statements made by the employer do not substantially differ from statements made by the negotiating team across the bargaining table. A central source will generally protect against this possibility. The strike plan, then, should provide for a single communications source.

2. Statements Should Never Create Obstacles To Settlement

Another critical communications rule should be kept in mind: an employer's statements -- particularly statements to the public -- must not be of such content that they thereafter become unnecessary obstacles to settling the issue(s) which gave rise to the strike. Far too often, statements by the parties become the biggest obstacle to settlement (e.g., "as the chief administrator, I can guarantee you that we would never ..."; "as mayor, you can be assured I wouldn't consider ..."; etc.).

3. The Role Of The Elected Official

Special attention to the role of the elected official in the communications process is in order. Although the appropriate role of the elected official will vary from case to case, certain general observations are possible.

It is imperative that the elected officials, to the greatest extent possible, present a united front in combatting a strike. In virtually all jurisdictions, the elected body has the right to meet in executive session to discuss matters pertaining to negotiations, including strike counter-measures. While it is entirely likely that there may be some differences of opinion among elected officials, these differences of opinion, to the greatest extent possible, should not be discussed outside of such executive sessions. A divided employer is a weak employer when it comes to handling a strike. Even worse, when an employee organization is aware of internal divisions, it will attempt to exploit these to its own advantage.

Members of employee organizations frequently seek to discuss strike issues directly with individual elected officials. This effort to make an "end run" around the negotiating team strongly should be resisted. A fairly standard response adopted by many elected officials has been politely but firmly to indicate that the employer has designated its representatives for handling the strike

CHAPTER 7

IMPACT OF A STRIKE UPON THE CONDUCT OF NEGOTIATIONS/POST-STRIKE CONSIDERATIONS

INTRODUCTION

While this Manual does not address itself to the broad subject of negotiations, the mere existence of a strike is apt to lead to the introduction of a number of issues in or relative to the bargaining process. Three of the most common and significant briefly are considered. They are:

1. Should an employer withdraw recognition or refuse to negotiate in the face of a strike?
2. How should an employer respond to a union's demand for amnesty for strikers?
3. What should be the employer's bargaining strategy dur- a strike?

Definitive answers to these questions are, of course, not possible. However, certain considerations which must be reviewed by the strike planning committee are presented below.

Finally, a brief discussion of general post-strike considerations is included.

A. Withdrawal Of Recognition Or Refusal To Negotiate While A Strike Is In Progress

The question of withdrawal of recognition in the event of a strike was mentioned earlier in a somewhat different context (*supra*, Chapter 1). The long-term employer objective during a strike is, in most instances, to arrive at a labor agreement that is fair, equitable, and which will allow the employer to continue to provide services at a reasonable cost and with a reasonable degree of flexibility. The employer's actions must be judged, then, in light of this objective.

It is doubtful whether a withdrawal of recognition will be helpful in obtaining a "good" labor contract. Some employers have been successful in withdrawing recognition until a strike has ended -- or beyond! Generally, however, such an approach has met with failure. Much the same can be said of a refusal to negotiate while employees are engaged in an illegal strike. (In some jurisdictions, it may, be illegal for an employer to bargain with a striking union.)

not negotiate a settlement of that grievance but, rather, should insist that the employees return to work and that the issue be submitted for resolution through the orderly processes of the grievance procedure.

B. Response To A Request For Amnesty

In the event of a strike, a union, often as a condition of settlement, frequently will make a demand for amnesty. Such a proposal will generally include demands that no striker shall be disciplined for striking, that any existing disciplinary action shall be revoked, and that all suits against strikers (and, of course, the union) shall be dropped. Occasionally, the union will demand, further, that no striker shall "otherwise be discriminated against" for having engaged in a strike.

The general question of amnesty for strikers ought to be raised by the planning committee before a strike occurs. How the jurisdiction will "come out" on the general issue necessarily depends upon its particular circumstances.

The issue of amnesty is not an easy one. It is a "gut" issue involving the clash of conflicting principles. On the one hand, employees should not be permitted to strike with impunity. If they are rewarded for their efforts with a contract at higher wage rates or with better benefits than before the strike, their conduct has, in effect, been rewarded and the lesson made clear to other public employees that a strike is the way to greater benefits for them as well. On the other hand, an employer must be realistic and pragmatic. If essential services are involved, some method must be found to resolve the strike and provide the public with the services it requires.

Much has been written about the issue of amnesty. The pros and cons will not fully be discussed here. It is suggested, however, that any strike plan:

1. Raise the question of amnesty;
2. Contain a list of the pros and cons of granting amnesty in different situations as well as reference to general articles on the issue of amnesty;
3. Include a confidential general recommendation for the strike committee concerning amnesty for: (a) primary strikers; (b) sympathy strikers; (c) strike leaders; (d) employees who engage in threats and/or acts of violence; and (e) others (these groups may be treated differently); and
4. Include a summary of available information concerning the union's history regarding amnesty demands and successes and the history with such demands of other area unions or employers.

D. Post-Strike Considerations

Once a strike is over, there is an understandable desire to forget the strike and return to business as normal. There are, however, a number of post-strike actions which should normally be taken. While memory of the strike is still fresh, the strike committee should prepare a fairly detailed after-action critique of the strike contingency plan. Problems should be noted and suggestions for improvement solicited. The committee should appreciate, however, that the union is likely to be engaging in a similar post-mortem and also planning accordingly.

Next, to the extent possible, the strike should be put behind everyone. For the employer, the emphasis in the preceding sentence should, perhaps, be placed on the words "to the extent possible." Post-strike disciplinary actions may still be in order. Further, the employer, consistent with its obligations to the public, should not normally assign a great deal of overtime to returning strikers since this will reduce the economic impact of the work stoppage on the strikers. The employer should, however, take care to treat employees as fairly and equitably as possible.

Finally, a frequently ignored consideration is the appropriate treatment of the employees, supervisors, and managers who labored long and hard on behalf of the employer during the strike. What the appropriate treatment should be must be left to each employer. Unfortunately, some employers have totally ignored this issue. Indeed, on occasion, strikers have been more favorably treated than those who remained on the job. At best, this is demoralizing; at worst, it encourages other employees (or supervisors) to join unions and/or to strike. Great care should be taken to insure that "loyal" employees are recognized for their loyalty and perhaps rewarded for it. At the very least, letters or personal words of "thanks" should be given to employees who supported the employer during the strike. Any further rewards should be discussed with counsel.

b. To commit (usually minor) damage to the employer's property during the strike.

The strike committee will have to formulate plans to protect against these two possibilities.

Experience indicates that sabotage is the most difficult tactic with which an employer must deal. During the course of its strike planning, the committee should require every department head to compile a detailed list of its "key" machinery and equipment; that is, machinery or equipment necessary to keep the department functioning in the event of a strike or other emergency situation. Small items, such as keys, valves and switches, are particularly susceptible to sabotage. Arrangements should be made for its protection or of its repair or replacement in the event that it should be damaged, destroyed or removed. A good example occurred during a strike some years ago by persons tending bridges in a large, metropolitan city. Apparently, the bridge tenders, prior to engaging in a strike, placed the bridges leading to the city in their locked and upright position. The tenders then walked off the job and, unfortunately for the city, took with them the keys to the bridge locks. Many frantic hours later, after traffic had backed up for miles and miles, and untold citizen inconvenience and worse had occurred, substitute keys finally were located. The moral of the story: provide for extra keys and related "key" items.

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Additionally, the strike committee should insure that police assigned to picket line activity are given specific instructions on handling pickets. These instructions should contain, among others, the following admonitions:

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3. Whenever possible, provide pickets with warning that if prohibited activity continues, arrests will occur.
4. Maintain accurate records of any and all incidents on the picket line.
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Additionally, crank calls -- both at the office and at home -- are a common form of harassment. The likely recipients of such calls, particularly the elected officials and members of the negotiating team, should be advised to consider securing unlisted numbers. They should be informed, further, that the best way to deal with a crank call is simply to hang up.

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best copy available

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SECURITY CHECKLIST

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______ Arrange to collect from employees going on strike all municipal equipment (keys, tools, etc.)

APPENDIX 4-C

INCIDENT LOG

Date ______________________ and time ___________ .m. of incident.

Location of incident ____

Name of individual reporting incident (print):

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Name(s) of other witnesses (print): ___________________________

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Detailed description of incident (be sure to name all individuals involved):

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Report prepared by: ____
(Signature)

Supervisor: ______________________________________
(Signature)

Date of Report: ___________________________________

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CHAPTER 6

COMMUNICATIONS

INTRODUCTION

Two separate items are considered in this chapter. Considered first are problems of communication as they relate to the internal mechanics of implementing the strike contingency plan. Considered second, and at greater length in appended materials, are problems relative to the effective communication of the employer's position to the public, to the strikers, etc. in the event of a strike.

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PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION
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WASHINGTON, D.C. 20001 (202) 628-6500
Affiliated with M.E.B.A. AFL-CIO

President
Robert E. Poli
Executive Vice President
Robert E. Meyer

April 15, 1980

Dear Fellow Members:

The attached educational packages provide organizational guidelines to assist you in the months ahead. Inside you will find:

1. A glossary of terms;
2. The cluster concept;
3. Local/cluster committee guidelines;
4. Individual and organizational self-help guidelines;
5. Pertinent attachments.

You will notice that the committee, communications and local/cluster concepts can be adapted to suit any size or combinations of facilities. I trust you will find the materials to be both informative and useful.

Robert E. Poli
President

/cfs

GLOSSARY OF TERMS

1. AFL-CIO Labor Council - A group of AFL-CIO locals united at the city, county or state levels for the purpose of obtaining mutual goals.
2. Apathy - A lack of emotion, interest or concern; a listless condition; indifference.
3. Authorization Vote - A democratic voting procedure by the PATCO membership to allow future courses of action.
4. Call PAC - A quick telephone communications system to inform the membership about vital information.
5. Checklist - An internal PATCO worksheet aide designed to record written proof of accomplished objectives.
6. Choirboys - A group of PATCO controller coordinators formed to educate the membership on pertinent issues.
7. Cluster - A local and/or group of PATCO locals united together for purposes of solidarity, strength and survival.
8. Committee - A group of PATCO controllers formed to accomplish membership goals.
9. Communications Network - A system of written and/or verbal messages between the PATCO leadership and the membership, designed to keep everyone totally informed about current situations.
10. Community Services, AFL-CIO - A family-oriented service available to any AFL-CIO union and to PATCO members, which cooperates with various civic and community groups to improve the quality of life while educating union members about available health and welfare benefits during adverse times.
11. Designee - A person authorized and chosen to perform tasks assigned to another.
12. Displaced Picketing - A picketing team which travels to outlying locations to assist in picketing.
13. Family Counselors - A team of individuals chosen to assist families for organizational and family benefit.
14. Good and Welfare Committee - A group of controllers formed to assist the membership and their families during a crisis.

15. Headquarters Committee - A group formed to staff and operate a local command center which coordinates and directs activities between committees and volunteers.

16. Internal Communications Committee - A group of controllers formed at the local or cluster level to facilitate the rapid dissemination of pertinent information to the membership.

17. Picket Line - A group of union members picketing a business or institution to protest a cause and to educate the public on issues of vital concern.

18. Picketing Committee - A group which develops and maintains coordination of picketing teams.

19. P.C. (Primary Contact) - A communicator who is responsible for the prompt and accurate relay of information to and from the membership via the facility representative.

20. Public Relations - The communications art of neutralizing or gaining public support for organizational purposes.

21. Scab - One who refuses to join a union; a union member who deserts the group actions of a union, such as the crossing of picket lines.

22. Secure Telephones - Coin-operated telephones or others which afford privacy and security of transmissions.

23. Security Committee - An organized group designed to provide courier and security service while maximizing membership effectiveness during a conflict. ?

24. Solidarity Committee - A group of PATCO controllers formed to arrange support activities during a conflict.

25. Validation - The process of verifying the accuracy of organizational reports.

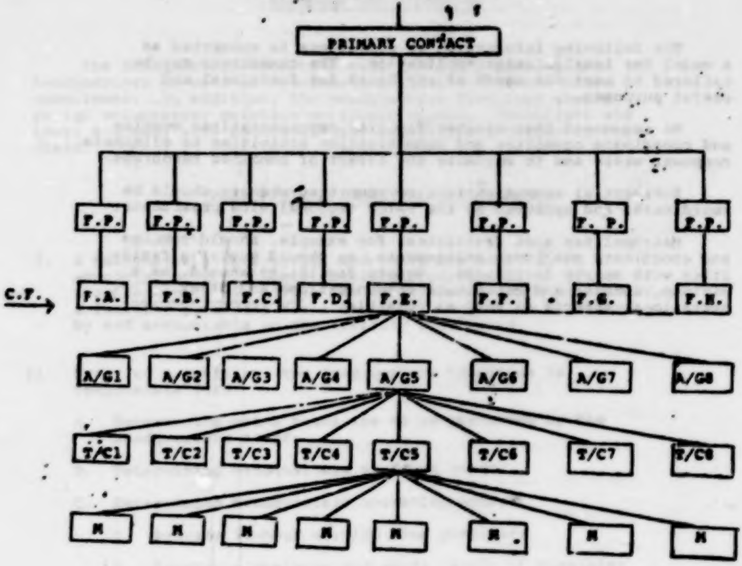
26. Victory - The result of good organizational planning executed by the membership.

THE CLUSTER CONCEPT

Envision a cluster either as a group of controllers at one facility or as a group of facilities banded together for common purposes -- solidarity, strength and survival. The cluster concept can be used either for communication purposes or for that and/or actual operational reasons during a conflict.

The following schematics are provided as guiding information and can be modified for local or regional use.

CLUSTER/COMMUNICATIONS CONCEPT


PRIMARY CONTACT
F.P.
F.P.
F.P.
F.P.
F.P.
F.P.
F.P.
F.P.
C.F.
F.A.
F.B.
F.C.
F.D.
F.E.
F.F.
F.G.
F.H.
A/G1
A/G2
A/G3
A/G4
A/G5
A/G6
A/G7
A/G8
T/C1
T/C2
T/C3
T/C4
T/C5
T/C6
T/C7
T/C8
M
M
M
M
M
M
M
M

C.F. = Cluster group of facilities
F.P. = Facility president
F.A. = Facility "A", facility "B", facility "C", etc.
A/G1 = Area/group "1", area/group "2", area/group "3", etc.
T/C1 = Team/crew "1", team/crew "2", team/crew "3", etc.
M = Member

COMMITTEES

The following information on committees is submitted as a model for local/cluster application. The committees may be tailored to meet the needs of any local for functional and useful purposes.

We recommend that cluster/facility representatives combine and coordinate committee and communication activities to eliminate manpower waste and to maximize the effect of combined resources.

Substantial communications or committee changes should be coordinated and approved by the PATCO regional vice presidents.

Metropolitan area facilities, for example, should combine and coordinate committee assignments, as should outlying facilities with nearby facilities. Remote facilities should, as a minimum, combine and coordinate communications and other operational aspects as much as possible.

HEADQUARTERS COMMITTEE

The Headquarters Committee will staff and operate the headquarters as well as coordinate activities between other committees. In addition, the Headquarters Committee should assign volunteers; maintain pertinent records, checklists and logs; and deal with both emergency and common problems in the field.

HEADQUARTERS COMMITTEE ORGANIZATION

I. A Headquarters Chairperson and three members will be appointed by the cluster facility president(s) no later than September 15, 198[illegible]. The Chairperson should be neither a facility president nor a choirboy. He/she is appointed by and accountable to the facility presidents.

II. Prior to a conflict, the Headquarters Committee is responsible for:

- A. Determining which tasks are to be performed by the headquarters staff;
- B. Determining headquarters staffing needs;
- C. Determining headquarters operating hours:
  - 1. Provide 24-hour service when possible;
  - 2. Provide a skeleton mid-shift staff, if possible;
- D. Determining facility/cluster headquarter requirements;
- E. Assist facility representatives in locating and securing the headquarters:
  - 1. Notify other facility representatives of headquarters' location; not Patco signs.
  - 2. Notify other facility representatives about phone numbers and operational characteristics of the headquarters;
- F. Maintaining a record of headquarter door key distribution;
- G. Making an inventory list of necessary supplies;
- H. Acquiring and maintaining a list of members' home and [illegible] conjunction with

I. Acquiring and maintaining a list of PATCO facility telephone numbers;

J. Acquiring and maintaining a list of pertinent AFL-CIO telephone numbers:

   1. Council numbers;

   2. Community Service numbers;

K. Developing and posting a rules of conduct list in the headquarters (coordinate enforcement through the Security Committee);

L. Developing and maintaining a list of other important telephone numbers:

   1. PATCO facility representatives;

   2. PATCO regional office;

   3. Police;

   4. Fire Department/paramedics;

   5. Bail bondsmen;

   6. Headquarters Committee Chairperson;

   7. Press publications;

   8. Television stations;

   9. Radio stations;

   10. Local labor leaders;

II. During a conflict, the Headquarters Committee is responsible for:

   A. Operating and staffing the headquarters in accordance with the predetermined operating hours;

   B. Coordinating all committee functions and resolving associated problems;

   C. Determining emergency situation actions to be taken;

E. Maintaining an incident log in which all unusual occurences are to be recorded;

F. Maintaining a legal log to record:

   1. Arrests and citations of members;

   2. Membership receipt of court orders (name, date, time, and location of service);

   3. Scheduled court appearance dates and locations;

G. Maintaining and distributing petty cash monies for small expenditures;

H. Maintaining a record of and responding to all supportive calls and letters as soon as possible;

I. Decorating the headquarters in a manner which would allow all participants to express their attitudes, i.e., a "scab board," a "picture board," a "good news board," etc.;

J. Restricting headquarters access to participating PATCO members only. Any other necessary, authorized visitors must be accompanied by a Security Committee member.

INTERNAL COMMUNICATIONS COMMITTEE

Realizing that communication with the membership is the key to maintaining a strong, unified union force, this committee will provide daily communications to all participants. The local/cluster communications network can be "plugged into" the national network to facilitate the rapid, accurate passage of pertinent information prior to and during a conflict.

Enclosed is a "call pac" or local communications network, which ensures the timely distribution of information. These "call pacs" must be established no later than August 15, 1980, and then forwarded to the PATCO Regional Vice President by August 20, 1980.

In addition, a checklist is enclosed.

INTERNAL COMMUNICATIONS COMMITTEE ORGANIZATION

I. A Chairman and two committee members will be appointed by facility representatives no later than September 15, 1980.

II. Prior to a conflict, the Internal Communications Committee is responsible for:

A. Developing the means and format for a daily or at least timely and periodical local/cluster "Conflict Newsletter";

B. Establish a "call pac" communications system at the local/cluster level:

1. Test the "call pac";

2. Submit "call pac" details to the PATCO Regional Vice President;

C. Develop and maintain a complete list of membership addresses and multiple phone numbers at which they can be reached at any time:

1. Update monthly;

2. Maintain several copies

II. During a conflict, the Internal Communications Committee is responsible for:

A. Preparing, printing and distributing to local/cluster participants a daily or at least timely "Conflict Newsletter" (consider using a different paper color each issue) which may contain:

1. Reprints of national or regional alert bulletins;

2. Reprints of favorable media coverage;

3. A "participant of the day" column;

4. Rally announcements and special events;

5. Comments, articles and cartoons;

6. Adversary lists;

7. Suggestions from participants;

B. Preparing, printing and distributing separate messages or announcements as necessary to participants which:

1. Ensure correct and specific wording;

2. Are made attractive and eye-appealing;

3. Do not falsely raise participant expectations through communications;

C. Preparing, printing and posting an "adversary list" in conjunction with the Security Committee;

D. Relaying messages from the facility representatives to participants;

E. Ensuring complete, accurate and timely passage of all national network communications;

F. Ensuring the presence of an authorized spokesman at the local/cluster headquarters;

G. Ensuring the communication of true, unexaggerated membership strength reports through the appropriate, designated communications channels to higher command levels;

H. Continuing the updating and recording of participants' phone numbers;

I. Maintaining a constant awareness and record of communicators' locations and phone numbers;

J. Develop and maintain a list of non-participants' addresses and telephone numbers.

ESTABLISHING A "CALL PAC"

Each facility/cluster representative is responsible for establishing a local communications plan ("call pac") no later than August 15, 1980. A detailed, typewritten copy shall be forwarded to the PATCO regional vice president no later than August 20, 1980. The local/cluster communications plan must provide methods through which:

1. Messages can be rapidly and accurately relayed from the facility representative to the local/cluster members;
2. In reverse, the facility representative is provided prompt verification (validation) of message delivery to his members;
3. A roster of current, local membership telephone numbers is established at which the member can be reached; it should be updated and provided to the facility representative and/or the designated communications alternates:

   Specifically, the plan should include the following provisions:

   a. The facility representative, or designee will relay the verbatim message which was received from the primary contact to each of the facility communicators;

   b. Each communicator will immediately relay the verbatim message to each member assigned to his/her jurisdiction;

   c. Each communicator will advise his/her appropriate contact (source) or the contact's designee when all members within his/her jurisdiction have been contacted, or after a specified, short time period has elapsed, whichever occurs first;

   d. The facility representative, or designee, will contact the primary contact (the original source) when all members have been contacted or after a specified, short time period has elapsed, whichever occurs first;

Below is an example of a current facility "call pac" which has been proven effective and is in use now.

"CALL PAC" PROCEDURES

The "call pac" shall be activated by either the President, Vice President or to a designated officer.

The area representative/alternate representative shall be given the message to be transmitted. It shall be copied verbatim.

Each area representative/alternate representative will in turn give his crew/alternate crew representative this message for verbatim dissemination. As soon as each crew member has been contacted, or no longer than 1 hour after the crew/alternate crew representative was initially called, the crew/alternate representative shall call the area/alternate area representative with the response to the call and the names of those members who were not contacted. It is the responsibility of the area/alternate area representative to ensure that everyone who was not contacted by the crew/alternate crew representative is informed. ALL members in the area MUST be informed!

No longer than 2 hours after the activating call, the area/alternate area representative shall contact the initiating officer with a response to the call and the number of members not contacted.

As we have learned from the past, communications during a crisis type situation can either make us unite or break us apart. This is not a game, it is a required procedure.

LOCAL/CLUSTER SECURITY COMMITTEE

The purpose of the Security Committee is to provide courier and security service to various committees and members while maximizing the union's effectiveness. Based upon past performances, the members chosen should be discrete, courageous, mature and reliable.

SECURITY COMMITTEE ORGANIZATION

I. A chairperson and at least three members will be appointed by the facility representative(s) no later than September 15, 1980.

II. Prior to a conflict, the committee should investigate and record the following:

- A. Normal facility traffic counts (daily, weekly and monthly figures);
- B. Normal facility staffing per area, sector and shift (including the number of journeymen and trainees);
- C. Normal traffic flow and patterns;
- D. Normal traffic restrictions, quotas and holding times;
- E. Normal criteria and time for sector, position or area certification by the FAA;
- F. Number of FAA supervisors specifying:
    - 1. Years as a supervisor;
    - 2. Amount of time they currently spend actually working traffic;
- G. Equipment status and quality of maintainance;
- H. Develop plans for the detection and validation of any operational problems related to the above which may occur within the air traffic system at future dates;

III. During a conflict, the committee should:

- A. Control access to and security for the headquarters;

with the Headquarters Committee, provide

C. Inform the Headquarters chairperson of any operati problems within the PATCO machinery;

D. Provide surveillance of air traffic facilities in or to identify adversaries and forward this information to the Headquarters chairperson;

E. Provide courier service as required;

F. Record and forward the following to the Headquarters chairperson.

1. Current facility traffic counts (daily, weekly and monthly figures);
2. Current facility staffing figures per area, sector and shift including:
    a. number of journeymen;
    b. number of trainees and their qualifications;
    c. number of supervisors and their qualifications;
    d. combined sectors or positions;
    e. closed sectors or positions;
3. Current traffic flow and patterns;
4. Current traffic restrictions, quotas and holding times;
5. Current criteria and time for sector, position or area certification by the FAA;
6. Shift hours worked by whom and by how many;
7. UCR's, unsafe conditions, etc.;
8. Reduced air traffic control separation standards used;
9. Use of unqualified personnel to control air traffic;
10. System errors and deviations;
11. Waiving of federal air regulations or fines;
12. Equipment status and quality of maintainance;
13. Factuality; not rumors or EXAGGERATION! Validate.

LOCAL/CLUSTER GOOD AND WELFARE COMMITTEE

The Good and Welfare Committee will attempt to minimize the financial hardships suffered by the membership during any conflict by utilizing all available resources of the AFL-CIO Community Services Program and other means.

GOOD AND WELFARE COMMITTEE ORGANIZATION

I. A chairperson and two members will be appointed by the facility representative(s) no later than September 15, 1980.

II. Prior to a conflict, the Good and Welfare Committee is responsible for:

   A. Establishing contact with the AFL-CIO Community Services division designated to serve the local/cluster area;

   B. Preparing eligibility guidelines for city, county and state welfare and social benefits available to the local/cluster membership;

   C. Preparing "how to" membership instructions on applications for various benefits;

   D. Developing fund raising plans;

   E. Developing husband-wife counselor teams to assist membership families;

   F. Preparing a plan for the solicitation, collection and distribution of food and other necessary items to impacted families;

   G. Preparing and presenting a briefing to local/cluster members on methods to arrange deferment of creditor payments;

   H. Preparing and presenting a briefing to local/cluster members concerning benefits and services available to them through the Good and Welfare Committee and AFL-CIO Community Services.

III. During a conflict, the Good and Welfare Committee is responsible for effecting its pre-planned activities:

   A. Help members secure benefits;

   B. In conjunction with the Internal Communications Committee, publish social and welfare benefits' facts for the membership, such as:

      1. telephone numbers;

      2. directions;

      3. name of contact.

TERMINATION OF MEDICAL COVERAGE

FPM Supplement 890-1, S9-2, Cancellation "For Other Purposes":

"a. Employees. An employee's enrollment terminates, subject to a 31-day temporary extension of coverage for conversion to a nongroup contract...".

FPM Supplement 890-1, S9-3, "Temporary Extension of Coverage and Conversion":

"a. Extension of coverage. Coverage of an enrolled employee continues temporarily for 31 days after the enrollment terminates for any reason except voluntary cancellation. In addition, if the employee is confined in a hospital on the 31st day of the temporary extension of coverage, benefits will continue during confinement up to a maximum of 60 more days. These temporary extensions of coverage are without cost to the employee, and apply also to any family member who loses coverage other than by the employee's voluntary cancellation or by the employee's enrollment change from self and family to self only. A change to self only is considered a cancellation for the family members who were covered under the enrollment, and they are not entitled to temporary extension of coverage for conversion.

"b. Conversion rights. (1) If an employee's enrollment ends for any reason other than voluntary cancellation, or if the coverage of a family member ends for any reason, except when an employee cancels or changes to a self only enrollment, the person whose enrollment or coverage is ended has a right to convert, without evidence of insurability, to a nongroup health benefits contract offered by the carrier of the plan. A family member who loses coverage because the employee cancels or changes to a self only enrollment does not have a conversion right.

"(2) Agencies are not expected to monitor conversion rights of family members. It is the responsibility of the employee (or the person who loses status as a family member) to timely apply for a conversion contract. From time to time, however, employing offices should publish reminders of family members' rights to convert in bulletins, house organs, etc.

"(3) Application for conversion (by letter for family members or on the back of the enrolee copy of SF-2810 for employees) should be made to nearest office of the plan. Normally, the application must be made, and the first premium paid to the carrier, within 31 days after termination of the enrollment or, for a family member, after termination of coverage ~~under the enrollment~~. Because of the limited time allotted

for conversion, employing offices should, when the em
coverage is terminated, issue SF-2810 as promptly as po
If the agency's notice to the employee on SF-2810 is del
the employee has until 15 days after the date in item E on
SF-2810 in which to apply for conversion, but in no event should SF-2810 be given to an employee later than 75 days after the effective date of termination of the enrollment.

"(4) A converted contract becomes effective at the end of the 31-day period of temporary extension of coverage described in paragraph a, even though the employee or a family member may be confined in a hospital on the 31st day and therefore entitled to a further extension of coverage.

"(5) Many plans do not provide the same benefits under the converted nongroup contract as are provided under the Federal employee group plans, and the premium rates are different. There will, of course, be no Government contribution to the cost of the nongroup conversion contract. An employee interested in converting should be advised to contact the local office of his or her plan for information about the benefits and cost of its conversion contract.

"c. Reinstatement of enrollment after conversion. If, on termination of enrollment, an employee obtained a conversion contract, and the enrollment later is reinstated retroactive to the effective date of the termination (as, for an employee who was removed and later is ordered restored to duty with full restitution of back pay), he or she may obtain a refund of all premiums paid on the conversion contract. The employee should apply, in writing, to his or her plan for the refund. Also, if the employee had received benefits during the time the conversion contract was in effect, he or she is entitled to an adjustment of the difference between the benefits paid by the carrier under the conversion contract and the benefits payable under the Federal enrollment."

NATIONAL CONTROLLER SUBSISTENCE FUND

ARTICLE I - GENERAL

Section 1. The controller subsistence fund shall consist of those monies collected from dues for that purpose and any interest, dividends, profits, or repayments made to the PATCO Controller Subsistence Fund resulting from backpay awards.

Section 2. Duration: The fund shall be perpetual unless dissolved by majority vote of the members of the fund. In case of dissolution, all financial obligations of the fund must be paid prior to disbursement of the monies.

Section 3. Objective: To provide financial support of members whose participation in a nationally sanctioned job action has resulted in suspension and/or dismissal.

ARTICLE II - RESPONSIBILITY

Section 1. In order to receive benefits, a member must:

a. Be a member as described in the PATCO Constitution, Article VI.
b. Be suspended and/or dismissed as a direct result of his/her participation in a nationally santtioned job action.
c. Have been an active member of PATCO for 180 days immediately prior to application for benefits. The 180 day limitation does not apply to new members who have been employed as Air Traffic controllers for less than one year.
d. File a grievance or administrative appeal against the suspension/dismissal.
e. Be certified as eligible by his/her local Executive Board. If no local Executive Board exists, the member must be certified by the Regional Vice President.
f. Deliver a promissory note to the Board of Trustees promising to repay the fund for benefits received in an amount equal to all backpay awards resulting from grievance, appeal, or court action, if any.

ARTICLE IV - BENEFITS

Section 1. Benefits shall be paid bi-weekly and shall be an amount equal to the base pay of the employee at the time of suspension/dismissal.

Section 2. Benefits will be paid for a period of time equal to the length of suspension. In the case of dismissal, benefits will be paid until the member is rehired. It is intended that a dismissed member be subsidized until he~~/she~~ attains a salary equal to that which he received prior to dismissal.

Section 3. Benefits payable under this Article are conditional upon satisfactory performance of duties assigned by PATCO, if any.

Section 4. Continuity: In case of extreme fund depletion, the National Executive Board

ARTICLE V - SANCTIONING

Section 1. A job action must be sanctioned by the National Ex. Board.

Section 2. Two-thirds of the members of the National Executive Board shall constitute a quorum for the purpose of job action sanctioning.

Section 3. A local may submit through a written petition for sanctioning through its Regional Vice President who may request a meeting or conference call of the National Executive Board. A representative from the facility initiating this action will be a non-voting participant of the National Executive Board meeting.

(These subsistence fund guidelines may be changed per this year's convention resolution.)

LOCAL/CLUSTER PICKETING COMMITTEE

The Picketing Committee must schedule and staff strong, derly picket lines at predetermined locations. Numerous oordination details, responsibility and authorization should be andled through a Picketing Committee chairperson and line oordinator at the local/cluster headquarters. In turn, the icketing Committee chairperson and line coordinator will assign uties to picketing team captains who will direct the picketing eams at various locations (most of them predetermined).

LOCAL/CLUSTER PICKETING COMMITTEE ORGANIZATION

I. A chairperson and two members will be appointed by the facility representative(s) no later than September 15, 1980.

II. Prior to a conflict, the local/cluster Picketing Committee must prepare a detailed, local/cluster picketing plan and submit a typewritten copy to the PATCO regional vice president no later than November 30, 1980:

   A. The picketing plan should include provisions to:

      1. Locate headquarters near picketing site, whenever possible:

         a. hotel room;

         b. van;

         c. office;

      2. Establish a locally financed, petty cash fund for defraying incidental expenses;

      3. Select picket captain for each 8-hour shift;

      4. Select line coordinators for each 8-hour shift;

      5. Prepare list of names and phone numbers of picket captains and line coordinators;

         a. include location and/or area to which each is assigned;

         b. other necessary phone numbers;

      6. Select a facility coordinator whose task will be to [illegible] locals which are

7. Establish hours of picketing (recommend 7:00 a.m. to 10:00 p.m.);

8. Establish shift hours for pickets;

9. Establish number of pickets required per shift at each location and/or area;

10. Prepare list of names and phone numbers of pickets;

11. Develop a picket duty roster;

12. Make picket duty assignments (location/area and shift hours);

13. Define picket location/areas for effective coverage;

14. Develop plan for distribution of picket signs at each location and/or area;

15. Prepare list of needed supplies for field use:
    - a. picket duty roster;
    - b. clipboards for captains/area coordinators;
    - c. pencils;
    - d. paper;
    - e. first aid kit;
    - f. staple guns;
    - g. picket stakes;
    - h. masking tape;
    - i. heavy string or twine;
    - j. other

16. Locate public telephones/restrooms/coffee shops nearest each picket location and/or area;

17. Establish Relief Subcommittee which will be responsible for providing pickets with refreshments;

18. Provide picket captain and area coordinators written instructions related to the following:
    - a. maintenance of duty assignment log;
    - b. maintenance of incident log;

        1. record unusual situations which may be questioned at a later date;
        2. witnesses;
    c. action to be taken in the event of an emergency;
    d. a list of pertinent telephone numbers:
        1. facility representative;
        2. local police and fire;
        3. paramedic;
        4. picket captains and coordinators;
        5. PATCO regional office;
    e. standards of conduct and dress expected of each picket;
    f. recording expressions of outside support;
    g. procedures to be followed in the absence of shift relief;
    h. restricting picketing to the "authorized area;"

19. Purchase adequate supply of picket stakes and poster paper, one week prior to a conflict;

20. Prepare signs in accordance with national guidelines;

21. At those places where picket stakes cannot be used, hold signs by hand or carry them over your shoulder by using heavy string or twine;

22. Assign members to police each picketing area;

23. Prior to his/her entering picket duty, brief each picketer concerning standards of conduct:

    a. drugs and alcohol are forbidden during picket duty;

    b. only one person will speak for PATCO at each location/area. All other pickets should refer comments/questions to that spokesman;

24. Enforce the dress code;

25. Stress to all pickets that they must cast a good image;

26. Alert members to the possibility of being arrest.

27. Instruct them how to respond to the threat of arrest.

    a. maintain silence;

    b. sit down or disperse;

    c. do not resist;

28. Assure them that bail will be posted;

B. Coordinate the above with the appropriate Headquarters chairperson where necessary.

III. During a conflict, the local/cluster Picketing Committee chairperson, coordinators and team captains are responsible for overseeing and coordinating the local/cluster picketing in accordance with the plans.

A. Chairperson responsibilities:

1. Estimate and plan for financial costs and petty cash fund disbursements;

2. Plan and determine supplies needed:

    a. picket duty roster;

    b. clipboards;

    c. pencils/paper;

    d. first aid kit;

    e. staple guns;

    f. masking tape;

    g. heavy-duty string or twine;

    h. weather combatants;

3. Develop and maintain current lists of pertinent telephone numbers in conjunction with other committees;

4. Compile and maintain a list of appropriate regulations and/or ordinances for all potential picket sites within the local/cluster area;

5. Designate local/cluster team picket captains;

6. Develop and maintain an "Alert Roster" which provides the names and telephone numbers of all picket teams, captains and coordinators;

7. Coordinate activities with the Headquarters Committee chairperson and the Security Committee chairperson about unusual picket line problems;

8. Assure the presence of a picketing representative at the headquarters during hours of operation;

9. Post and maintain picket assignments at least one week in advance;

10. Select a cluster picket coordinator to coordinate activities with other locals which are either furnishing picketers or are in need of picketers;

11. When appropriate, develop and provide written instructions concerning II (previous pages);

12. Preplan and secure an adequate supply of picketing materials by ensuring availability and sources at least one week prior to a conflict:
    - a. picket stakes;
    - b. poster paper, etc.;

13. Develop a plan to distribute picketing materials to various locations:
    - a. prepare signs according to nationally furnished guides;
    - b. determine locations where picket stakes cannot be used:
        - 1. use hand-held signs;
        - 2. carry over shoulders and secure with twine;

14. Develop and provide instructions on how to respond to arrests such as:
    - a. maintaining silence;
    - b. sit down or disperse;
    - c. do not resist;
    - d. assure members that bail will be posted;

15. Preplan and establish hours of picketing and shift hour assignments;

16. Preplan and determine the number of pickets required at each location;

17. Develop a list of public telephones, restrooms and coffee shops nearest each picket location;

18. Brief picket captains on:

    a. duty and incident logs;

    b. dress code;

    c. picket line conduct;

    d. policing of picket areas;

19. Establish picket relief teams to provide refreshments to the picketers;

20. Brief team picket captains on shift relief policies;

21. Provide media releases to the team picketing captains as provided by the Internal Communications Committee;

22. Provide guidelines for actions to be taken in the event of emergencies;

23. Secure phone numbers of:

    a. police department;

    b. fire department;

    c. paramedics;

    d. local/cluster headquarters;

    e. others;

24. Record expressions of outside support;

B. Team picketing captain's responsibilities:

1. Provide media releases as furnished by the picketing chairperson;

2. Refer all other media questions to the union headquarters or to designated union spokesmen;

3. Maintain order and discipline;

4. Coordinate the picket roster alert system;

5. Assure locations of public telephones, restrooms and coffee shops nearest the picketing area;

6. Direct the policing of the area;
7. Brief picket members concerning standards of conduct:
   a. dress codes;
   b. personal conduct
   c. media questioning;
   d. picket line crossing attempts;
8. Ensure that the picketers present a good public image:
   a. no alcohol or drugs;
   b. no violence;
9. Secure picketing materials and distribute;
10. Maintain logs and checklists;
11. Report unusual incidents;

C. Coordinator responsibilities:

1. Coordinate activities with other locals which are furnishing pickets;
2. Maintain a pertinent list of locations and telephone numbers necessary to accomplish assigned tasks;
3. Become thoroughly educated on the entire picketing operation at all levels;
4. Preplan the assignment of one picket team to accomplish "displaced" picketing to other locations beyond the cluster area as directed by the picketing chairperson in consultation with higher PATCO levels.

LOCAL/CLUSTER SOLIDARITY COMMITTEE

The Solidarity Committee will arrange activities which promote unity and solidarity among participants. Rallies, meetings and entertainment should be planned and coordinated with other committees.

LOCAL/CLUSTER SOLIDARITY COMMITTEE ORGANIZATION

I. A chairperson and two members will be appointed by the facility representative(s) no later than September 15, 1980.

II. Prior to a conflict, the Solidarity Committee is responsible for:

- A. Developing a plan which will bring participants together on a daily or timely basis:
    - 1. Free movies;
    - 2. Sports activities;
    - 3. Guest speakers;
    - 4. Refreshments;
    - 5. Labor music;
    - 6. Dances, etc.;
- B. Developing formats and agendas for the rallies and meetings which:
    - 1. Make them interesting;
    - 2. Stress morale and winning;
    - 3. Provide a platform for participants to "blow off steam";
    - 4. Minimize absenteeism;
    - 5. Enforce the "we" and teamwork principles and actions;

III. During a conflict, the Solidarity Committee is responsible for:

A. Scheduling rallies and meetings at the direction of the facility representatives and:

   1. Consult with other committees;

   2. Use the Internal Communications Committee to publicize;

B. Maximizing attendance;

C. Soliciting talented controllers to provide acceptable entertainment.

SURVIVAL = SUCCESS

All successful group endeavors are characterized by a tiger-like togetherness of those people who have banded to accomplish a mission. Group members take care of one another to ensure the propping-up of weaker members, while defending the group and its mission from outside attack. Survival is not just nice -- it is necessary.

A well prepared rank-and-file union membership must have the numbers, the will and the wherewithal to win. Although hardships are to be expected during a major conflict with an employer, the severety of those hardships can be minimized through proper planning and through acquiring detailed knowledge of what to expect. The fear of the unknown future often chills the will to chance.

Financial, psychological and physiological stresses must be expected and, if not defeated, at least minimized to assure survival and success.

THE ELEMENTS OF SURVIVAL AND SUCCESS

I. Financial preparation (individually).

A. Spouse's income:

1. Part-timers go full-time;

2. Homemakers go to an outside part-time or full-time job;

B. Controller participants acquire part-time job;

C. Save income tax returns and other bonuses;

D. Financial short-term loans;

E. Borrow from family;

F. Borrow from insurance plans;

G. Resist and eliminate present financial obligations:

1. Postpone new purchases;

2. Decrease or eliminate credit card purchases;

H. Selling present property and acquisitions at a la date;

I. Stock up on essential goods at today's prices for later use;

J. Deferring payments at a later date;

K. Anticipate costs of a conflict:

1. No paycheck;
2. Fines;
3. Suspensions;
4. Transportation;
5. Legal;

II. Financial preparations (organizationally).

A. Decrease non-essential spending;

B. Increase savings;

C. Fund raisers;

D. Anticipate future costs:

1. Headquarters;
2. Supplies;
3. Hotels/motels;
4. Increased travel;
5. Hired help;
6. No dues;
7. Fines;
8. Legal;
9. Equipment;
10. Printing;

III. Psychological preparation (individually).

1. Combat through new knowledge;
2. Rationalize collectively to learn fears of others too -- then deal;
3. Combat through participation, not inaction;
4. Identify sources of anxiety;

B. Understand issues and procedures:

1. Get the facts;
2. Back off and relax afterwards;

C. Overconfidence:

1. Be realistic;
2. Realize potential hazards;

D. Low self-esteem:

1. Realize your importance;
2. Pump yourself up;

IV. Psychological preparation (organizationally).

A. Group fear:

1. Inform and reinforce the facts:
    a. Point by point;
    b. Piece by piece;
2. Eliminate fear through leadership:
    a. Informative newsletters;
    b. Concise, organized general membership meetings;
    c. Informational bulletin boards;
    d. Fight rumors through facts;

B. Group undecisiveness:

1. Inappropriate policies;
2. Lack of good policies and decision making;
3. Corrective action through:
    a. organization;

b. support committees;

c. communications;

d. majority rule;

e. everyone works;

V. Physiological preparation.

A. Proper rest -- better decisions;

B. Good diet -- healthier person;

C. Controlled or eliminated drinking -- appropriate decisions, sounder actions;

D. No chemical dependencies -- same;

E. Physical exercise -- better health and mental relaxation.

MOTIVATION AND ORGANIZATION

One of the primary responsibilities of leadership is to create a constant atmosphere of involvement with the membership. This involvement, if successful during normal times, will become a firm foundation during times of conflict.

There are various ways to motivate and organize people, but the most important factor is to create and to maintain membership involvement.

The following are suggestions that you may use to motivate and to organize membership involvement:

I. Determine membership needs and then devise the means to reach those goals.

   A. Create the necessary components of your machinery, such as committees:

      1. Grievance handling;

      2. Communications;

      3. Finances;

      4. Good and welfare;

      5. Political action;

      6. Entertainment/solidarity:

         a. ball games;

         b. sports tournaments;

         c. dances;

         d. picnics;

         e. special interests, etc.;

   B. Organize lines of authority, responsibility and accountability:

      1. Who is in charge of what;

      2. Tasks to be accomplished by when;

      3. Internal discipline;

      4. Coordination -- info.

II. Communicate.

  A. Start a newsletter or improve yours:

    1. Don't just stand on the soapbox:

      a. educate;

      b. inform;

  B. Use your bulletin board effectively:

    1. Fresh, new material every few days;

    2. State policies and decisions:

      a. board meeting minutes;

      b. general membership meeting results;

      c. combat rumors through facts;

    3. Show the legislative and political situations;

    4. Show how management is treating them;

  C. Communicate with management in writing for future protection and for record keeping purposes:

    1. It wins grievances;

    2. It protects you;

    3. It sets the record straight;

III. Conduct well run general membership meetings.

  A. Short -- 1½ to 2 hours at most;

  B. Well organized:

    1. Agenda;

    2. Short, individual presentations;

    3. Firm discipline -- it reflects your total organizational set-up;

  C. Allow for membership feedback:

    1. Let them talk, too;

    2. It creates involvement;

D. Meet at different times and locations to allow all crews/teams to attend:

  1. ARTCC's can try area/group meetings pertinent to only that group's interests -- same for larger terminals;

  2. Larger terminals and ARTCC's can try back-to-back meetings:

    a. meet at 1:00 p.m. for swing shift attendees;

    b. meet at 3:00 p.m. for day shift attendees;

    c. this covers all shifts and RDO's;

E. Stagger monthly meetings so that each crew/team is not favored;

F. Control drinking and disruptive behavior;

G. Post notices and communicate the importance of the meetings verbally and otherwise.

IV. Constantly seek new membership involvement.

A. "The same old faces" should not do all the work;

B. New ideas need new people -- help the new activist get going.

V. Build, be positive always.

A. A winning attitude makes the winning team winners;

B. Learn from setbacks, but always look forward.

VI. Compete internally -- give your own awards and letters of appreciation.

A. Recognize good work done by giving public recognition at meetings;

B. Pit area against area, team against team in the healthy competition of reaching union goals.

VII. Create a sense of belonging and togetherness to promote unity.

A. Emphasize the "we," not the "I";

Mr. **Bond**. I might add that when the 1978 slowdown happened, this committee, I believe, held a hearing on it which it never finally closed, and I believe that it might be interested in what happened at O'Hare Airport.

Mr. **Fary**. Thank you.

Mr. **Bond**. One more point I might make is that in January of this year, the long-time president of PATCO was thrown out in a coup by the union, and the new president was placed in office, who planned a more radical and activist course. And on Monday in the Fort Worth Star Telegram, the plan for PATCO was made clear in an interview with Mr. Robert Poli, who is the president of that union.

He said that while he did not condone a national strike, he believed that it might happen; all the ingredients were there for it. The union's goal was to get the right to strike for PATCO employees. No other Federal employee has that. They want the right to strike, they want the right to negotiate for wages, which the Congress now sets and which no other Federal employee union today has, and they want to create an independent Federal corporation patterned on the Post Office for the air traffic control system, and I believe the Matsui bill is the first step in that direction, and I am confident that they will endorse it, because for the first time, it splits the air traffic control system off from the rest of the FAA, and they want that Federal corporation established so that they will then have the right to strike and the right to negotiate for wages, and which Mr. Poli described as "a right which would not be taken lightly," that is, the right to strike.

The goal of the union in the end is to achieve parity with airline pilots. They are paid from $40,000 to $140,000 per year for 80 hours of work per month.

And I would be happy to put in the interview with Mr. Poli in the Fort Worth Star Telegram of Monday, saying all of that.

Thank you.

Mr. **Fary**. I would appreciate it if you would submit any information for the record pertinent to what you have said.

[The following was received for the record:]

Fort Worth Star-Telegram, Monday Morning, August 18, 1980

— Star-Telegram Photo by WILLIS KNIGHT

ROBERT POLI . . . FAA destined to fail?

Reorganize FAA, says head of union of air controllers

By KRISTELLE PETERSEN
Star-Telegram Writer

The new president of the air traffic controllers union — admittedly more militant than his predecessor — wants the Federal Aviation Administration reorganized as a quasi-private company and controllers given full bargaining rights, including the ability to strike.

Robert Poli, who ousted the 10-year incumbent in a showdown earlier this year, was elected in April to a three-year term as the president of the Professional Air Traffic Controllers Organization. And he now is looking ahead seven months to when the union's contract with the FAA expires.

Poli acknowledged there is a "grassroots support in the membership for a strike in 1981." And he admits that by the end of the year PATCO, now pushing for 100 percent membership, will have a strike fund of about $3 million.

But he denies that he is advocating a strike.

As executive vice president for eight years, Poli cultivated his contacts by traveling to the FAA's 400 facilities operated by controllers and listening to their concerns.

• • •

AS A RESULT, he concludes the FAA has not kept up with the times and is controlling the nation's rapidly increasing air traffic with outmoded equipment. Unless a crash or near-miss injuring a number of passengers jolts the FAA into action, the politically motivated agency will continue to operate with its 'antiquated system that is just being held together with rubber bands," he said.

The whole structure should be overhauled, he said. The FAA — which both promotes and regulates the nation's air traffic system — should be moved out from under the Department of Transportation. He recommended establishing a federally funded quasi-private corporation in charge of air traffic services with a chairman and executive board chosen from private industry.

Poli, highly critical of FAA chief Langhorne Bond, wants the chairman and board to be appointed by and report to the president and to be confirmed by Congress. Regulatory responsibilities, he said, should be handled exclusively by the National Transportation Safety Board.

• • •

HE CHARACTERIZED the present FAA as a "house of cards" destined to collapse.

"By bringing people in from private industry to sit on the executive board and monitoring the operation, you'd get a much more quality product," he said.

Controllers, presently plateaued by what he called a regressive pay system, should be taken out from under the Civil Service Administration, he said. The Civil Service time and grade standards require a controller to be in the top grade level for 10 years to earn the maximum $45,128 annual salary.

(Pay grades are determined by the volume of air traffic at the facility, with a beginning controller in the lowest grade making about $14,000 annually. PATCO officials report most controllers at the major facilities make between $37,000 and $38,000 annually, although a handful at the busiest airports make as much as $50,000 with overtime.)

* * *

AIR TRAFFIC in the United States has increased 30 percent since 1974 and Poli accused Bond of failing to hire an adequate number of controllers in an effort to impress Congress with his "lean, clean-looking FAA."

He claims Bond is creating a safety hazard by refusing to ask for the congressional appropriations necessary to upgrade the air traffic computer system and that Bond is disguising the danger by refusing to document computer outages of less than one minute, which, Poli claims, are often the most hazardous.

"I think we can prove there were more air traffic controllers working at positions in 1977 than there are right now in the system. Traffic has increased and the controller complement has gone down," Poli said during a recent visit here to talk with local members.

Poli, traveling to improve communications with his 14,100 members across the nation, said he wants the rank and file involved in union operations. Poli, 46, who started his career as a controller 21 years ago in Pittsburgh, will focus on educating local officials — including those in the Fort Worth En-route Traffic Control Center and the Dallas-Fort Worth Airport tower — on union tactics. The union's contract expires in March and Poli said he wants local input before negotiations begin.

* * *

DESPITE HIS ambitions to make PATCO a union with full bargaining rights, Poli denies that he "advocates or condones" a strike to achieve that end. As federal employees, controllers can't strike or negotiate wages or hours, which, they contend, reduces them to "collective begging."

"I think that everybody should have the right to strike. It makes management much more realistic and much more reasonable," he said. "What people typically look at when you talk strike is that you are going to be dealing with a group of mad dogs that are going to do nothing but make outlandish demands to make them better than everybody else."

The "tool to strike would not be used frivolously," Poli said.

Local PATCO officials claim a walkout of 80 percent of the 16,500 controllers in the nation could cripple the economy because controllers have a direct impact on 26 to 27 percent of the nation's gross national product.

* * *

ALREADY THE FAA, which Poli claims "would like to break PATCO tomorrow," has filed an unfair labor practices charge against the union for what the FAA maintains are strike-related activities. The FAA alleges that it's illegal for PATCO representatives to go around the country informing members of their rights in the event of a strike — how to get food stamps, unemployment benefits and respond to government prosecution. PATCO counters they have the right to talk about these issues under the First Amendment.

FAA Regional Director C.R. Melugin Jr. said that if PATCO strikes, the agency will seek a court injunction to halt the action and will levy the maximum daily fine of $25,000 against the union, fire the striking controllers and turn them over to the U.S. Justice Department for criminal prosecution. Melugin, who said he "doubts that controllers will jeopardize their careers" by striking, said the majority here "are less militant than in other parts of the country."

* * *

POLI CLAIMS that during the past four years the Dallas-Fort Worth Airport tower, with a 84.4 percent union membership, has become "one of our strongest facilities." And he defends his militancy as essential to accomplishing the goals of PATCO. He said he will continue his programs of intensive education of the membership, congressional testimony, legal challenges of existing procedures, and detailed documentation of safety hazards, which include frequent calls to the news media by local officials.

PATCO, he said, will "attack different areas within the government that nobody has before," such as the General Service classifications, which are "artificial barriers restricting controllers from being promoted."

"I am militant as far as defending the rights of individuals," Poli said. "The feeling I have is that PATCO must take on these challenges and not fall into the normal humdrum that some other federal unions have of just paper shuffling back and forth and not accomplishing anything. I intend to accomplish a lot more in the future."

* * *

THOSE GAINS will not be made through slowdowns or sickouts — tactics which, "although justified in some cases," have hurt the 13-year-old union in the past, he said.

Poli was "very instrumental" in the 1970 sickout, which occurred, he said, because the system "had become so dangerous that the controllers decided they just weren't going to take it any more." Although that action resulted in the hiring of 2,100 more controllers in 1971, Poli said it cost the union about 4,000 members and rebuilding has been a long and expensive process.

* * *

POLI SAID HE wants "better, more expedited grievance procedures to prevent the FAA from disciplining controllers or changing procedures without consulting the union." Additionally, he said, the union will seek more input into staffing levels and technical areas.

Although wages and hours are nonnegotiable, Poli said he favors parity with salaries of pilots who earn $80,000 to $90,000 annually for a 75- to 80-hour month.

Mr. **Fary**. I now yield to Ms. Ferraro.

Ms. **Ferraro**. I thank the gentleman for yielding.

I just wanted to follow up on that. Could you define what they did when you said they struck. Because if you recall, the hearing that I referred to that I held in New York, in which Mr. Amato of PATCO testified, and he indicated that what he was doing was calling upon the air traffic controllers of the New York metropolitan area to begin immediately to review and follow all FAA procedures and work with extreme caution. Is that what they did?

Mr. **Bond**. The language which was in the letter to us, the letter that asked for a $7,500 tax-free annual bonus, said that the controllers, if they did not get it, would withdraw their enthusiasm. That is their exact language. They certainly did so on Friday, in wasting a million dollars worth of fuel.

What they do is slow down. They go beyond the FAA separation standards. They delay traffic deliberately, and then they go back to normal operations when they want to do so, as was the case during the past week.

We have clearly documented patterns of operation in our runway configuration at O'Hare Airport, where the calculated capacity of the airport, using safe separation standards, is 80 or more movements per hour. And the controllers have achieved it. Suddenly, just like that, it falls to 65, and 3-hour holding patterns are established as a result of it. And then, after we talked to Mr. Schultze, who happens to be the leader of the O'Hare controllers, and he is satisfied with the response, it goes back up to 83 per hour, just like that—and also, it takes 6 hours to untangle the awful mess of air traffic control that has been created by that delay. So they can turn it on and they can turn it off.

The use of the term, "strike", which you mentioned earlier, I mean as a word of art, and I am using it in the way the Federal courts have defined "strike" under the Federal labor laws, which means not only walking off the job, but also withholding services and operating at less than safe and expected standards.

Ms. **Ferraro**. But what about the comment that what they are doing is merely asking them to review all FAA procedures and to operate with extreme caution?

Mr. **Bond**. We have a clear record of requiring people to operate within our standards already. What happens is that they do not; they do more. When I see an airplane that has 8 miles separation instead of 3, I am not fooled.

Ms. **Ferraro**. Thank you.

Mr. **Fary**. Thank you, Mr. Bond.

I yield back the balance of my time, Mr. Chairman.

Mr. **Anderson**. Mr. Mineta?

Mr. **Mineta**. Mr. Chairman, it sounds like we are going to have a vote right now. Do you want to recess until we come back from the vote?

Mr. **Anderson**. It is a closed quorum.

Mr. **Mineta**. All right, fine.

Mr. Bond, I want to thank you again for your testimony and for the job you have done as the Administrator of the FAA. As has already been cited to you by Mr. Snyder and Mr. Goldwater, in comparison with other Administrators there at FAA, you have done an excellent job.

I have read the GAO report, and I have continued to read it very closely, and I think of it as a good management report about FAA. I am not convinced that there is anything in that report that still says that it ought to be separated into two agencies.

Mr. **Bond**. There is nothing in that report.

Mr. **Mineta**. Yet there are things that are in that report that show deficiencies within the FAA. I am wondering to what extent, on your own initiative, you have started to take some corrective action, not only because of your own findings relative to the way FAA works, but also the findings of the GAO report.

Mr. **Bond**. Well, my problem certainly with the GAO analysis is not with the pointing out of difficulties in our agency. It is with the solution, and that is that procedures and systems alone will cure them. I do not think that is right. I think the problems are more fundamental, and also the strengths of the agency are more fundamental.

Mr. **Mineta**. But doesn't that go to the other part of the report, that it is structural in nature? I think that is what Mr. Levitas and Mr. Matsui are saying, that it is structural in nature. I am wondering whether you are not playing into the hands of GAO in saying that.

Mr. **Bond**. I do not know exactly what you mean by "structural in nature". I do not know that I caught that.

Mr. **Mineta**. Well, I guess that fact that you have 57,000 employees there, roughly, is it manageable?

Mr. **Bond**. Oh, yes; I am confident the answer to that is "Yes." I am sure it is manageable. I have not found that it is unmanageable at all, though the obstacles which I had talked about which constrain Federal managers are the greatest difficulty that I can see. I do not think the size or complexity of our agency is that much of a problem.

It is complex. The reason that I believe, though, that it should remain in a single, unified whole is that the interrelationship of the things that we do is so close.

I would like to point out three programs that involve both safety and air traffic control, programs with which this committee is very familiar. They are examples that I thought up last night, when I was getting ready to come before this committee.

The first is the microwave landing system, clearly a technology and an air traffic control matter, yet fundamental to its implementation is the ability of pilots to fly a curved approach under low visibility conditions. The regulatory responsibility on one hand, and the air traffic control responsibility for MLS are inseparable; neither can proceed without the other. So that is one.

The computer replacement program is another. Our computer replacement program is not just replacing existing programs. It is also an integral structure for building in the new collision avoidance systems of the future, and those systems have to be tested by pilots in real world situations and a regulatory regime by our regulatory people, established before we are convinced that, for example, ATAR's, cockpit display of traffic information, and so on can be done practically. Air traffic control and pilot responsibilities, the regulatory portion of it, are together in the same bag.

And the final one that I wanted to point out was the TCA issue, one which this committee has been very interested in. The TCA's are a creation of the air traffic control folks, and yet the ability of pilots to fly in and out of terminal control, and that they should be designed for pilot convenience and practicality, is integral of it.

It seems to me that those three examples and many more all illustrate how our air traffic control system and our operational responsibility are integrated in the regulatory responsibilities that the FAA has.

Mr. **Mineta**. And is that gap being bridged?

Mr. **Bond**. There has been a problem bridging that gap in the past.

Mr. **Mineta**. That is the thing, you see, that I think was brought out by Mr. Matsui earlier. He mentioned a communications problem.

Mr. **Bond**. Yes; I think it will be worse if we are put into two bureaucratic pots. But he is correct, and I have said before this committee that insularity from one portion of our agency to another is a major difficulty of the FAA; the notion of the lack of communication back and forth is where we are weak, and I am convinced that we are ending that sense of isolation, and I know that it is true that people who have been given leadership responsibilities in the FAA lately are required to talk to their counterparts everywhere else, and in fact, they do, without fighting.

Mr. **Onstad**. Mr. Mineta, there is an interesting parallel here, too. In preparation for these hearings, we went back in the hearings before the subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, where in 1958, Pete Quesada testified on this issue. And I would refer the committee to page 29 of the report, where Quesada is talking about integration of exactly these kinds of things, and he says that in the prior history, when there were two separate segments, it did not work at all. He says you have got to have one to make it work. And I will not burden the record by reading it, but I would recommend it to those who are interested in this subject.

And from my own day-to-day involvement in the regulatory process, it is difficult enough as a management technique, just within a single agency, to get the various services to work so that they are functioning and coordinating together.

I have no conception of how we would make the regulatory process work if they were two separate and distinct agencies. It is just a very, very tough problem.

Mr. **Mineta**. I guess my frustration lies with the fact that it takes so long for things to happen——

Mr. **Bond**. You are absolutely correct.

Mr. **Mineta** [continuing]. The time it takes from R. & D. to getting something out into the field. And someone will say, "OK, let us go with this system," and someone else will say, "Now, hold it, XYZ company has another system that is just around the corner. It is going to be a little better. Let us hold up deploying this out in the field until XYZ comes around, testing it." Consequently, we do not get that good system out in the field, and we are still working with equipment that is 8 to 10 years old.

Mr. **Bond**. I think that is an intelligent and accurate comment, and it is one that has frustrated me. I have a difficult time getting my folks to focus in or to freeze technology and implement it, because they are just a little bit further away from something that is really a lot better.

So, taking a 5-percent slice when a 50-percent slice seems to be nearby is a hard act to get our people to do. It is a management failure on the part of the Administrator, in the end, and also on the part of our technical people. I repeat, I think our people have got a very high order of technical competence in our engineering field that you are referring to. I believe that their management competence is not as good" as their technical competence. And we have to learn how to package and implement our work better. Also, I think we are doing that a lot better than in the past.

Mr. **Mineta**. Now, the thing, of course, that we have been doing on our Oversight and Review Subcommittee is looking at the issue of the SAFER report. Has that been submitted to you yet? It was supposed to have been submitted to you back in June or July, as I recall.

Mr. **Bond**. I think that it has not, but I would like to check on that, sir.

Mr. **Mineta**. You have no idea when you might expect to receive it?

Mr. **Bond**. I just did not brief myself on the SAFER report before I came to this hearing.

Mr. **Mineta**. We have 1 more day of hearings before the Oversight and Review Subcommittee, frankly, and that is going to be you.

Mr. **Bond**. I understand.

Mr. **Mineta**. That is going to be based on your getting that SAFER report. We have been pushing the date back on that O and R hearing, based on whenever this SAFER report is going to get to you.

It just seems to me that we cannot wait that much longer. Frankly, I think we are going to go ahead and hold those hearings. I think we have a tentative date of September 10 for those hearings, whether you get that report or not.

Mr. **Bond**. Well, I anticipate testifying on the 10th, and I am aware of the pendency of that hearing.

Mr. **Mineta**. I think this is part of the frustration that many of us have with the FAA, the fact that time lines are not followed, for whatever reason they slip, and these kinds of aggravations result in bills like 6651 or 6671, whatever the bills are, that say, "Let us break up FAA into two." I do not believe that those are really solutions to the problems that exist down there. It just seems to me we will Balkanize it even further and get away from solving the problems.

Mr. **Bond**. I have been reflecting upon this, and upon the success that attended the space program during the salad days of NASA—because we have been compared to that—our engineering and development budget in the FAA is $100 million. The R. & D. program for NASA today in aeronautics is five times that size, and that is in a time of restricted budget for NASA. When NASA was building the space program, everything was built in triplicate. There was always more money to be thrown at the program. It was submerged in money. We do not operate in that kind of a fiscal circumstance. I think we could shorten time developments significantly in our engineering program if we had unlimited funds, or even more money. I cannot say that I want to urge the Congress to give it to us. They have to be compared to other users of money.

But we are operating in an economical way in the FAA, and I believe we could shorten it down if we had more funds.

Mr. MINETA. Let me ask you very quickly, you talk about budget process, procurement regulations, environmental laws. I am just wondering whether or not that does not add to the case that Mr. Levitas and Mr. Matsui make about a widescale reorganization, or would it be widescale reorganization versus splitting the agency in two, within the FAA umbrella?

Mr. BOND. The FAA has had more internal reorganization in the last 3 years than ever in its history before. Our headquarters, for example, has fallen from almost 250 individual organization units to just over 150. It has been streamlined. The number of reporting elements to me has fallen by about 30 percent.

Mr. MINETA. We have a second bell on us right now. Maybe what I would like to do is ask you, do you need any kind of extraordinary powers that you do not have now? Maybe you could respond when we come back.

Mr. ANDERSON. We will recess for 20 minutes for a vote.

[Short recess.]

[Whereupon, Ms. Ferraro assumed the Chair.]

Ms. FERRARO. The hearing will come to order.

Mr. Mineta, I believe you had a question for Mr. Bond.

Mr. MINETA. Thank you, Madame Chairperson.

I think Mr. Bond was going to give us a response to what kinds of tools or powers he feels he needs to correct some of the deficiencies, quote-unquote, that have been pointed out.

Mr. BOND. Well, I have been taking a poll of my colleagues here, and the consensus is that procurement regulations would probably be the one that we would prefer most to simplify. That is very tough to fight though. It takes 3 to 5 years to acquire a new system—just the purchasing process, not the design of it—and that is the most difficult.

That would be the one that, in terms of fundamental statutory reform, that I guess we would rank highest, and I would again say that the Federal Civil Service System, I think, from a day-to-day point of view, is probably the most difficult one.

Mr. MINETA. Nothing within your own administrative—

Mr. BOND. Oh. I have been content with the progress that I believe our agency has made. I have not been content with the time frame. It always takes longer than I think it will.

So it seems to me that the President's reelection is the cure to my dilemma.

Mr. MINETA. Thank you, Mr. Bond.

Ms. FERRARO. I have been asked by Mr. Levitas to ask you, Mr. Bond, if you would furnish for the record the number of persons who over the last 10 years have survived an aviation crash and have later died in postcrash fires.

Mr. **Bond.** I would be happy to provide that.

Ms. **Ferraro.** With that, we thank you for your testimony.

Mr. **Bond.** If I could diversify for a minute, Madam Chairlady, I have here something I would like to give to the committee.

This is an article that is copied out of the Washingtonian magazine of recent date, and it is a fiction story of the Washington Redskins, called "The Red Tape Redskins."

Threatened by purchase by an Arab state, the Washington Redskins are acquired as a Federal Corporation, and the general manager of the Redskins in this story is from the General Accounting Office, who proclaims that the playbook must be published in the Federal Register, and that all deletions on the squad must be done on the basis of seniority, with the youngest first.

There is more in it, but—and also, the coach is from the State Department, who says to the team, "Winning isn't everything."

Thank you very much for your time.

Ms. **Ferraro.** Thank you, Mr. Bond.

Mr. Bursley, from the National Transportation Safety Board, is our next witness. Is he here?

[No response.]

Ms. **Ferraro.** We will proceed with Mr. Miller, president of Systems Safety Inc.

[No response.]

Ms. **Ferraro.** We are losing witnesses.

Mr. Stempler, would you approach the table, please?

Mr. Stempler is the chairman of the Government Affairs Committee of the Airline Passenger Association.

Mr. Stempler, we welcome you. We are sorry for the delay in the testimony, but nonetheless, you can see that we are most concerned about making a complete record with reference to this hearing.

So if you wish, you may either read your full statement, or if you wish, we will accept it into the record, and you may summarize.

Mr. Stempler, the full text of your prepared statement, and attachments, will appear in the record at this point.

[The statement referred to follows:]

STATEMENT OF DAVID S. STEMPLER, CHAIRMAN, GOVERNMENT AFFAIRS COMMITTEE OF THE BOARD OF DIRECTORS, AIRLINE PASSENGERS ASSOCIATION, INC., BEFORE THE SUBCOMMITTEE ON AVIATION, COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION, UNITED STATES HOUSE OF REPRESENTATIVES, HEARINGS ON VARIOUS BILLS AND OTHER PROPOSALS DESIGNED TO ENHANCE THE SAFETY MISSION OF THE FEDERAL AVIATION ADMINISTRATION, AUGUST 20-21, 1980

Mr. Chairman and members of the Committee:

I am David S. Stempler, Chairman of the Government Affairs Committee of the Board of Directors of the Airline Passengers Association, Inc. ("APA"). I thank you for the opportunity to appear before the Committee today to provide you with APA's views on various bills under consideration and other proposals to enhance the safety mission of the Federal Aviation Administration.

APA is the representative of over 75,000 frequent airline travelers, who average 40 round-trip airline trips per year according to our most recent survey. APA is vitally concerned with issues of aviation safety not only because our Charter directs us to be, but because we feel we have an important duty to our members, and the general public. I am sad to say that APA has had a member on almost all of the major commercial airline accidents in the last several years. We would like that trend to stop.

Mr. Chairman, there are many ways in which we can enhance the safety mission of the FAA. The opportunities for enhancement are so vast, that we will only touch on a few in our testimony, and leave to other witnesses the responsibility to inform you in these other areas which include:

A. Issues raised by the General Accounting Office Report:

1. Improved systems for identifying safety hazards;
2. Better planning on specific and general safety matters;
3. Better monitoring and implementation of safety projects; and
4. Improved evaluation after implementation of safety projects.

B. Issues raised by the National Research Council Committee on FAA Airworthiness Procedures:

1. Need for enhanced engineering capability;
2. Improvements in certification process;
3. Improved maintenance inspection and procedures; and
4. Wider use of independent advisory boards and the de-politicization of the administrator and deputy administrator of the FAA.

C. H.R. 7611 introduced by Representative Barry Goldwater, Jr., to provide that receipts and disbursements of the Airport and Airway Trust Fund not be included in the U.S. Budget. This proposal has the greatest potential for quick and immediate amelioraton of safety problems. Hopefully, it will allow the unlocking of billions of dollars from the Trust Fund for use of its designed purpose--safety.

Other issues which we will not include in our testimony today, were presented by APA to the National Research Council Committee on FAA Airworthiness Procedures in January, 1980. We will file for the record a copy of that testimony. The issues raised in that testimony, which we will not include in my testimony today were:

1) Should the aircraft certification process be opened up to include representatives of flight crews, cabin crews, passengers and any other concerned and interested parties?

2) Should the use of designated engineering representatives in aircraft certification be continued in its present form?

3) Should safety recommendations of the NTSB be equivalent to airworthiness directives and have the immediate effect of law? And, should the NTSB have the authority along with the FAA to withdraw the type certificate of any aircraft?

Mr. Chairman, I would like to devote my time today before the Committee on the question of whether the FAA should be relieved of the responsibility for the "promotion, encouragement, and development of civil aeronautics" under Section 103 of the Federal Aviation Act. If so, should such functions be transferred to the Department of Transportation or to other current, or to be formed agencies of the Federal government.

The Airline Passengers Association strongly believes that the FAA should be relieved of the responsibility for the promotion, encouragement, and development of the airline/aviation industry to the extent that the agency is concerned with the economic health and viability of the airline/aviation industry. Now, I want to make it perfectly clear what we mean. The FAA, as restructured to be solely involved in aviation safety, must take cognizance of the economic impact and considerations of its safety regulations and enforcement procedures. By Executive Order, all Federal Agencies are required to be aware of the economic impact of their actions. What we are saying is that those parts of the FAA which are devoted to ensuring the economic health and survival of companies of the airline/aviation industry should be removed from the agency. APA has taken this position because there is an inherent, potential conflict of interest in the FAA trying to be a strong safety regulator on the one hand, and trying to encourage and promote and develop the economic health of the airline/aviation industry, on the other hand.

APA has heard many of the arguments against separating safety from the promotion function of the FAA. One often used is that the best way to promote the airline/aviation industry is to have a safe air transportation system. That may be true, but it is also true that you would have no airline/aviation industry if it wasn't safe. So having safe airplanes and a safe system is a basic requirement and necessity of the industry. Another argument has been that in the current administration and in previous administrations, a safety decision has never been compromised because of economic considerations. Our testimony today will present a number of instances where the Committee can decide for itself whether safety was compromised. But it is important to note that whether or not this administration has always placed safety considerations first, we are dealing with the issue of whether or not the statute and regulations be established to ensure that safety is not compromised. In addition, we have heard from industry representatives that they are not aware that the FAA performs any promotion or encouragement of their businesses. If this is the situation, then we should have no problem in removing the promotion function from the FAA's charter.

Mr. Chairman, I think that it is important to put our discussion of these safety issues in perspective. The U.S. air transportation system is exceedingly safe. Most of our discussions of safety issues involving the airline/aviation area concern how we can make that system even safer, and operate better. It is also important to understand that our differences concerning these issues involve relatively small differences between both points of view. In a sense, most of our arguments are not about the extremes of black and white, but fall in that gray zone where we argue about the relative degrees of safety.

In our discussion of removing the non-safety functions from the FAA, we do not want to suggest that the FAA would ever knowingly countenance an unsafe practice for economic reasons. On the other hand, one cannot demand the issuance of safety regulations for design and operation of aircraft without being mindful of the economic consequences and realities of such actions. We understand that there must always be a compromise between the two, but we want the line moved closer to safety than it is today. Too often we feel that the FAA is overly concerned with economic impact considerations, adjusting its actions within the gray zone, towards the industry. Reasonable people might differ as to where the decision line ought to be in the gray zone. APA would like to see that line move more to the safety side than the economic side.

I think one of the best ways to evaluate this question of whether or not the FAA has at any time leaned more to economic considerations than safety considerations, is to divorce ourselves a little bit from the rhetoric and see how they have actually performed in given situations. APA is most familiar with the actions and responses of the FAA following the crash of American Airlines DC-10 Flight 191 in Chicago on May 25, 1979. Others presenting testimony to this Committee may be able to present other examples. As this Committee is aware, APA was deeply involved in the legal proceedings against the FAA which resulted in the grounding of McDonnell Douglas DC-10s. Our purpose in discussing this issue is not to rehash the whole DC-10 issue and certification and other related issues, but to use it as a basis with which to match FAA responses to NTSB and other recommendations being made during a given time period. It should be noted that during the DC-10 controversy last year, many parties, including APA were making recommendations to the FAA. I think it would be most helpful to the Committee to limit our discussion to only those recommendations made by the NTSB, and the FAA responses.

NTSB RECOMMENDATIONS	FAA ACTIONS
Crash of American Airlines DC-10 in Chicago on Friday, May 25, 1979 at 4:03p.m. E.D.T.	
Issuance Time: 6:00p.m. May 27, 1979	Issuance Time: 11:58a.m. May 28, 1979
Number: A-79-32	Number: Airworthiness Directive #1 (AD#1)
Action: Inspect all pylon attach points on all DC-10 aircraft by approved inspection methods.	Action: 1. Replacement of bolts in only one of the three attach points. 2. Visual inspection of a limited part of the pylon. FAA did not require the inspection of all attach points as recommended by the NTSB. Also FAA chose visual inspections of thick, complex metal structures as opposed to more reliable methods of non-destructive testing including: radiography, ultrasonic, eddy current magnetic particle, and dye penetrant.
Action Time: Immediately (Class I, Urgent Action--"commencement and completion of action is mandatory to avoid imminent loss of life or injury and/or extensive property loss".)	Action Time: 3:00a.m. E.D.T., May 29, 1979 (Time for compliance was 33 hours after the NTSB recommendation.) The time selected was midnight Pacific Daylight Time which would be after the carriage of all traffic on Memorial Day, May 28.
11:00a.m. May 29, DC-10 found with a 27 inch crack in the spar web.	
	Time: 8:59p.m., May 29
	Number: Airworthiness Directive #2 (AD#2)
	Action: 1. Require a detailed, although still visual inspection of a larger area of the pylon. (Visual inspections continued to be utilized.)

NTSB RECOMMENDATION	FAA ACTIONS
	Action Time: Immediately. (This action was more in line with what the NTSB had recommended 51 hours earlier.)

5:00p.m. May 31. The FAA reports that 68 of the 138 U.S. DC-10s then operating (almost half) were found to have over 91 problems in engine mount assemblies.

On June 2, NTSB learns that two additional American Airlines DC-10s have cracks. Maintenance procedures used by American in removing and reinstalling the engine and pylon may have been at fault. Vertical misalignment of a fraction of an inch could cause the crack. The NTSB warned that after the pylon is attached, an inspector cannot observe visually the area that has been cracked and the crack could go undetected.

Time: 3:20p.m. June 2 (Oral) and 11:30a.m. June 4 (Written)	Time: 11:30p.m. Monday, June 4
Action Number: A-79-45 & A-79-46	Action Number: Airworthiness Directive #3 (AD#3)
Action: 1. Require an immediate inspection of all DC-10 aircraft in which an engine pylon assembly has been removed and reinstalled, for damage to the wing-mounted pylon aft bulkhead, including its forward flange and the attaching spar web and fasteners. Require removal of any sealant which may hide a crack in the flange area and employ eddy current or other approved technique to ensure detection of such damage.	Action 1. The FAA again required visual inspections of the pylons (after the NTSB specifically stated that visual inspections were inadequate). FAA ordered inspections only of those DC-10s which had pylons removed and reinstalled after the issuance of AD#2. (This was not all DC-10s in which an engine pylon had been removed and reinstalled at any time in its operating history. This would have most likely included all DC-10s.)
2. Issue a maintenance alert bulletin directing FAA maintenance inspectors to contact their assigned carriers and advise them to immediately discontinue the practice of lowering and raising the pylon with the engine still attached. Further instruct that the carrier should adhere to the procedure recommended by Douglas Aircraft Company Service Bulletin which include removing the engine from the pylon before removing the pylon from the wing.	2. FAA Flight Standards Service issued a Maintenance Alert that all repairs were made in accordance with approved practices and procedures.

NTSB RECOMMENDATIONS	FAA ACTIONS
Action Time: Immediately	Action Time: Immediate (56 hours after NTSB recommendations.)

4:45p.m. June 5, a Temporary Restraining Order is issued by a U.S. District Court Judge to ground all DC-10s. The Order stated that "the Administrator has failed to adequately 'promote safety of flight of civil aircraft' in violation of the statutory mandate of 49U.S.C. § 1421."

6:48a.m. June 6, the Type Certificate of the DC-10 is withdrawn by the FAA.

As you review the actions taken by the FAA on the DC-10, you will notice that many of the actions fell far short of what the NTSB recommended. The NTSB would issue Class I, Urgent recommendations "commencement and completion of action is mandatory to avoid imminent loss of life or injury and/or extensive property loss" and we see delays of 33 hours, and 81 hours, and 56 hours. After a Class I, Urgent recommendation we see the FAA not requiring compliance until all Memorial Day traffic is carried. One can only conclude that the FAA was more concerned with airline and passenger convenience than safety. This was an area where the FAA was overshadowing safety with financial considerations.

There was an excessive reliance on unreliable visual inspections of complex metal structures, where more reliable scientific methods were available, though costly and time consuming. The FAA continued to only require visual inspection even after the NTSB stated that visual inspections would not work because airline structures blocked the view of the part that was cracking. It is ironic that the reason that the DC-10s were grounded by the FAA was that cracks were discovered in aircraft that had been previously visually inspected One of the arguments that APA made in court was that if the FAA used visual inspection, there was a chance that they were not going to catch all of the cracks.

We can only conclude again that more reliable, non-destructive testing was not used because it was costly and time consuming. Here is an action which goes outside the "gray zone" into an area where economic interests far outweighed safety.

The most telling aspect here, is that from the time of the accident on May 25th until the time the DC-10 was grounded for 38 days, the FAA did not know what was wrong with the airplane. After two short groundings they learned that almost half of the DC-10s had problems in the engine support structure. Instead of grounding the airplane until they figured out what was wrong, they allowed the plane to operate until a court order was issued and more planes were found with cracks. Failure to act decisively to protect the public, when they didn't know what was wrong with the plane, can only be attributed to being overly concerned with the sales and operating prospects of the aircraft. APA feels that this emanated from their statutory duty to be concerned with the promotion, encouragement, and development of the industry. It is for these reasons that APA believes the FAA should be relieved of this statutory charge.

Specific Bills Relating to Re-structuring of the FAA

A number of bills have been presented to restructure the FAA. Before commenting on these bills, I would like to state our philosophical position. As we noted in our testimony, APA believes that the FAA has had its greatest difficulty when it tries to balance safety needs against financial ones. We also note for the record that the agency has problems balancing safety and political issues. It is for these reasons that we seek the removal from the FAA of concerns for the economic health of the industry. We also favor the removal of those aspects of the agency which embroil it in intense politics, such as ADAP grants and the operation of Washington Metropolitan Airports.

The functions now performed by the FAA that we support removal of are:

1. Promotion of aircraft sales and air travel. APA suggests that they be moved to the Department of Commerce or elsewhere in the Department of Transportation.
2. Administration of the Airport Development Aid Program.
3. Operation of Washington Metropolitan Airports.

The question of whether the Air Traffic Control System ought to be removed from the FAA is an issue that we still have under consideration. The ATC system is heavily involved in a safety function, but is also involved in ADAP expenditures through funding of Facilities and Equipment. Since the ATC system has some financial aspects and since it is vulnerable to political pressure which could result from strikes, radar outages, and delays, APA is leaning toward the removal of the ATC system.

APA therefore concludes that H.R. 7850 introduced by Mr. Matsui comes closest to our determination of the way the restructured FAA should look. We can support the separation of FAA functions into an Air Safety Administration and an Aviation Operations Administration.

APA supports the concept of H.R. 6771 in proposing the separation of safety and non-safety matters. However, we are unclear as to where the ATC system would fall.

APA also supports H.R. 7611 to remove the receipts and disbursements of the Airport and Airway Trust Fund from the budget. Expenditures have been the subject of much juggling to balance the budget, and this will help to de-politicize the agency.

The Airline Passengers Association thanks you for the opportunity to testify today. I will be happy to answer any questions that you may have.

STATEMENT OF

DAVID S. STEMPLER

CHAIRMAN, GOVERNMENT AFFAIRS COMMITTEE OF THE BOARD OF DIRECTORS

OF THE

AIRLINE PASSENGERS ASSOCIATION, INC.

BEFORE THE

NATIONAL RESEARCH COUNCIL

COMMITTEE ON FAA AIRWORTHINESS PROCEDURES

January 23, 1980

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Mr. Chairman and members of the committee:

I am David S. Stempler, Chairman of the Government Affairs Committee of the Board of Directors of the Airline Passengers Association, Inc. ("APA"). I would like to thank you for the opportunity to appear before the committee to provide you with APA's perspective on FAA airworthiness procedures.

The Airline Passengers Association is based in Dallas, Texas and is a corporation which provides services and representation for its 50,000 members. A majority of our members are frequent, business oriented travelers who average about 40 airline trips per year. APA is the air travelers version of an automobile club, in that we try to provide for the needs of the person who is traveling frequently in our air transportation system. APA's package of services include: discounts at hotels and car rental companies; a computer-based luggage retrieval system; participation in a group travel/accident insurance policy; flight logs with telephone numbers and facilities of airlines and airports throughout the United States and the world; representation of our members with the airlines; and access to a toll-free telephone number to receive world-wide weather forecasts. In addition, our members receive a newsletter and a bi-monthly magazine. One of our most important functions is to represent our members' general interests before federal agencies and the United States Congress.

Since its inception, APA has been involved in many matters concerning the safety and protection of its members, and indeed the traveling public at large. The by-laws of APA state that the organization's principal objective is to "develop and maintain a service organization furnishing for all association members any and all service methods...designed for their safety, comfort, convenience and economy in air travel."

As you may know, APA received a great deal of notoriety from its legal proceedings against the Federal Aviation Administration concerning the FAA's dealing with the DC-10 problem following the crash of American Airlines DC-10 Flight 191 in Chicago on May 25, 1979. I think it is fair to say that the DC-10 incident, among others, was a catalyst for the creation of this committee. Because of that I would like to highlight some of the matters in the DC-10 incident that APA had the opportunity to view close-up. A more complete statement is contained in Exhibit A to this statement and is entitled "Chronology of Events of APA's Involvement in the DC-10 Matter." With your indulgence, I will turn to Exhibit A and briefly outline some of the important points.

It is with this background that we would like to present to the Committee our views on various issues concerning FAA airworthiness procedures.

I. Should the aircraft certification process be opened up to include representatives of flight crews, cabin crews, passengers and any other concerned or interested parties? If so, are legal safe-guards available to protect manufacturer's "proprietary information"?

The Airline Passengers Association believes that the aircraft certification process should be opened up. We support the concept of having the issues raised in aircraft certification open to debate and question by those people who are affected by them, namely the flight crews who operate the aircraft, cabin crews who work inside the cabin, mechanics who work on them, the passengers who ride in those aircraft, and any other group which can demonstrate the need and value for their involvement.

During the process of certification of an air transport category aircraft, the FAA must determine whether the design is in accordance with Part 25 of the Federal Aviation Regulations. The determination of the compliance of a design with Part 25 is a highly complex matter and cannot always be answered yes or no in a vacuum. Sometimes the answer is based on various assumptions--assumptions acceptable to the FAA and the manufacturers,but which may not be acceptable to third parties. As such, the third parties can provide a reasonable check and balance system for the certification process.

An excellent case in point concerns the approval of the design of the slat actuation system for the DC-10. The FAA accepted the design for the slat actuation system that did not include a mechanical or hydraulic locking system to prevent the uncommanded retraction of leading edge slats. The FAA established a Special Condition on January 7, 1970 for the DC-10 because the DC-10 control system had a new design,in that all controls were to be hydraulicaly powered. One part of the Special Condition states that with respect to flight control systems and surfaces, including slats, the DC-10 must be capable of continued safe flight and landing after;any single failure; any combination of failures that is not extremely improbable;and any jam in the control system that is not extremely improbable.

Following the crash of American Airlines DC-10 Flight 191, the FAA Administrator commissioned a study of the slat system and a report was issued to the Administrator on July 9, 1980 entitled "Report to the Administrator on the Investigation of the DC-10 Series Aircraft with Type Certification Requirements Under Asymmetric Slat Slat Conditions." The report notes that to demonstrate compliance with the failure aspects of the Special Condition with respect to the slat control system, McDonnell-Douglas conducted "extensive Failure Modes and Effects Analysis which were extracted and formalized in the initial analysis report submitted to the FAA."

With respect to any combination of failures, the report states the following: "The analysis did not attempt to show the airplane would be controllable in the event of an engine failure in addition to the slat retraction and, in fact, the speed margin could be negative in this case; however, this combination of failures had been shown to be 'extremely improbable'."

One can now argue as a result of the American Airlines crash that the simultaneous failure of an engine, and slat asymmetry take-off is not "extremely improbable." The acceptance of the mathematical computations which formed the basis of the conclusion that multiple failures are "extremely improbable" is not now acceptable to APA. It might not have been acceptable at the time of certification and might have been the subject of greater review than occurred.

APA has reviewed proposed legislation which calls for the Secretary of Transportation to appoint a "Type Certification Board" to participate in the investigation of an application of a new type certificate or for an amendment of an existing type certificate for an aircraft. The legislative concept of the Type Certification Board provides for the Secretary of Transportation, at the request of any member of the Type Certification Board, to hold a public hearing for the purpose of examining specific questions with regard to the safety of aircraft. APA agrees with this concept, as long as there are safe-guards for proprietary information and as long as there are specified, short time periods in which a decision is required to be rendered.

With respect to the protection of proprietary information, APA understands that there is a fear of disclosure of such information by the manufacturer in certification matters,if segments of the public participate. APA feels that the solution may be to have each participant enter into a non-disclosure agreement, enforceable by injunction, criminal penalty, civil damages, and/or other penalties to deter violations of confidence. Furthermore, use of such information by a non-signatory to the non-disclosure agreement would also be enforceable by such penalties. Limitations on the availability of documents and information could also be on a "need to know" basis for participants who might be concerned with less than the entire certification of the aircraft.

The key issue is protecting the traveling public from deficiencies in an aircraft before it enters service. Safety must come ahead of financial concerns of the manufacturers as long as there are legal safe-guards to protect proprietary information. The countervailing risk is that a manufacturer will not compete in the marketplace with new aircraft designs because of a fear of loss of proprietary data.

First of all, we should not forget that some of this information may be protected by patents. Secondly, some devices or design concepts may not be useable or of value to another manufacturer. But nonetheless, if a manufacturer wishes to forego building a profitable aircraft because of a concern of loss of proprietary information with all of the safeguards mentioned, then APA feels that the need to have aircraft designs subject to as much critical analysis before it flies as possible, outweighs the loss of the availability of that design to the American economy and the American people.

II. Should the use of Designated Engineering Representatives in aircraft certification be continued in its present form?

APA feels that there should be a change in the certification process to eliminate the need for the utilization of Designated Engineering Representatives in their present form. Such persons are placed in the intolerable position of the inherent and potential conflict of interest of trying to serve their employer/manufacturer on the one hand, and the FAA on the other. Basic principles of agency law state that a person can only be an agent for one principal. In this case we are asking a person to be an agent for two principals, and both human nature and the law don't consider that to be a workable situation.

The Federal Aviation Act requires that the FAA ensure that aircraft are properly and safely designed, properly and safely built, properly and safely operated, and properly and safely maintained. The FAA has chosen to fulfull its duties to ensure safe design by performing an audit function, as opposed to an independent verification of each design point. APA recommends that the procedures be changed so that the FAA itself or wholly independent designated engineering representatives confirm design details, not just audit or simply review the work of others. That is not to say that each flight test or mathematical computation must be done twice, but on the other hand some aspects should be independently reviewed. APA will support an increase in the FAA's budget to encompass increased personnel or costs to perform such an independent design verification function.

III. Should the FAA be relieved of the responsiblity for "promotion, encouragement, and development of civil aeronautics under 49 U.S.C. 1303(b), to the extent that it involves the economic well-being of the airlline/aviation industry? If so, should such functions be transferred to the Department of Commerce or elsewhere in the Department of Transportation?

The Airline Passengers Association believes that the FAA should be relieved of the responsibility for the promotion, encouragement, and development of the airline/aviation industry. There appears to be an inherent conflict of interest within the FAA in trying to be a strong safety regulator on the one hand, which will have the effect of discouraging aviation, and trying to encourage and promote the economic health of the aviation industry on the other hand. After all, grounding an aircraft for design problems not only does not promote aviation, but raises serious questions in the minds of the public about the safety of other aircraft, which is the exact opposite of their mandate to"promote, encourage, and develop civil aeronautics." APA's position is that safety must first be considered without the economic consequences of compliance.

The FAA should be restructured so that their only function is to be tough and forthright safety enforcers and not to be concerned with the economic impact of such safety regulations on the manufacturers and operators. The Federal Aviation Act in 49 U.S.C. 1421 requires that the Administrator shall cause the airlines to operate with the highest possible degree of safety. Our involvement in the DC-10 matter led us to believe that at times the economic health of the airlines and the manufacturers played a part in the determination of the continued operation of the DC-10.

So as not to be misunderstood on this point, we are not saying that the FAA allowed the DC-10 to fly at a time when they were totally convinced it was unsafe. What we are saying is that there was a "gray zone" where the FAA determined the risk of another accident,with certain safe-guards and inspections,was acceptable. Our analysis of the statutes and regulations plus advice of experts led us to the conclusion that the risk was unacceptable. APA felt that the dire economic consequences of a continued grounding or major redesign of the aircraft figured into the FAA's analysis of the situation. After all, why not order the plane to be grounded while the need for design changes is ascertained and/or design changes made, but for the economic impact on the operators or manufacturers? Would a new aircraft awaiting certification be certificated with outstanding design questions? We think not. APA felt that these issues were irrelevant when balanced against passenger safety. We also felt that this balancing was done because of the FAA's statutory mandate from Congress to promote and encourage aviation. The removal of such a duty from the FAA, we feel, would help to eliminate any conflict that may exist.

APA believes that the promotion function should be moved preferably to the Department of Commerce which performs the promotion, encouragement and development functions of most other U.S. industries. We don't think that it should be moved elsewhere within the Department of Transportation as long as the FAA is part of the DOT, because then the conflict will be moved from the FAA Administrator to the DOT Secretary. On this subject, perhaps other functions of FAA such as funding of airport development should be moved to other parts of the Department of Transportation. That would leave the FAA with the sole function of being strict, safety regulators.

IV. Should safety recommendations of the NTSB be equivalent to airworthiness directives and have the immediate effect of law? Should the NTSB have the authority along with the FAA to withdraw the type certification of any aircraft?

The Airline Passengers Association feels that the National Transportation Safety Board should have far greater power and authority in safety matters by making their safety recommendations have the immediate effect of law and giving the Safety Board the authority to withdraw the type certification of aircraft. Oftentimes, NTSB recommendations, even urgent recommendations of the Safety Board, are either not acted upon for long periods of time or are disregarded in total. Many times this results from cause, as determined by the FAA, but sometimes it results from administrative pique or jealousy. To deal with such conflicts, APA suggests that a wholly independent Safety Review Board be established which would hear on an emergency basis, conflicts between NTSB safety recommendations and, FAA airworthiness directives, other FAA actions, or FAA non-action. The Safety Review Board would also settle disputes on the withdrawal of the type certification of an aircraft. The Safety Review Board would be composed of acknowledged independent experts and would sit much like a Court of Appeals. The details would have to be worked out by Congress, but the net result would be that if there exists a conflict between the FAA and the NTSB, it will not go on for long. When the NTSB makes a safety recommendation, subject only to the review of the Safety Review Board, there would be no delays, incorrect interpretations, and inaccurate responses as occured throughout the period of the DC-10 grounding.

In closing, I would like to thank the Committee for hearing from the Airline Passengers Association on these issues. I hope that our comments were helpful. I will be happy to answer any questions that you might have.

CHRONOLOGY OF EVENTS OF APA'S INVOLVEMENT IN THE DC-10 MATTER

Exhibit A

Friday, May 25

4:03 p.m. (all times Eastern Daylight Time), American Airlines Flight 191 crashes on departure from Chicago's O'Hare Airport.

Saturday, May 26

5:30 p.m. James E. Dunne, II, President and Managing Director of APA sends a telegram to Administrator Langhorne M. Bond of the FAA, and James B. King, Chairman of the NTSB, requesting an immediate, scientific investigation of all major support portions of DC-10 aircraft engine mounts to determine whether structural failure due to metal fatigue or design problems occurred in the American Airlines DC-10.

6:00 p.m. Harold J. Salfen of APA learns from an NTSB staff member stating that there had been no foreign object ingestion in the engine that separated from the American Airlines plane.

Sunday, May 27

Elwood Driver, Vice Chairman of the NTSB and in charge of the air crash investigation in Chicago, reports that investigators found a bolt which had broken and which had been part of the engine support structure of the DC-10 which crashed.

6:00 p.m. NTSB issues Safety Recommendation A-79-32 to the FAA stating that the pylon (the structure that holds the engine to the wings) forward thrust link attach bolt had fractured and recommends that an Airworthiness Directive be immediately issued to "inspect all pylon attach points on all DC-10 aircraft by approved inspection methods." The recommendation was issued on a Class I, Urgent Action basis meaning "commencement and completion of action is mandatory to avoid imminent loss of life or injury and/or extensive property loss."

Monday, May 28 (Memorial Day)

11:58 a.m. FAA issues an airworthiness directive (AD#1) which required: replacement of bolts in only one of the three attach points of the pylon, and visual inspection of a very small part of the pylon, not all attach points as required by the NTSB, and not all major support portions of the engine mounts as requested by APA. APA was concerned about the validity of these inspections because a visual inspection is the most unreliable for thick, complex metal structures. Other, more valid methods of non-destructive testing available for use were: radiography (X-ray); ultrasonic; eddy current; magnetic particle; and dye penetrant.

X-rays are most reliable and should have been utilized. Complaince was not required until 33 hours after the NTSB Recommendation, not immediately as recommended, apparently not to interrupt the carriage of Memorial Day traffic.

Tuesday, May 29

9 a.m. APA officials in Dallas and Washington attempt to get information from Headquarters and Western Region of FAA concerning reports being received pursuant to A.D. # 1.

11 a.m. Administrator Langhorne M. Bond and officials at the FAA are notified by United Airlines of serious problems in the pylon. Deficiencies were being found not only in the areas that were required to be inspected pursuant to A.D. # 1, but in other areas of the pylon. One United DC-10 had a 27-inch crack in the spar web that was found accidently and through the vigilence of a United mechanic. In addition, some twenty-seven attachment fasteners were missing or severed.

1 p.m. Administrator Bond issues a statement saying that inspections pursuant to A.D. # 1 were "turning up grave and potentially dangerous deficiencies in many of the pylon mountings." Bond's press statement had the words "inspection by the most reliable scientific means" crossed out and above them the less exacting "inspection by approved procedures" written in. The Administrator's Statutory duty is to ensure that air carriers "perform their services with the highest possible degree of safety". APA was concerned that by lowering the inspection standard that the Administrator was violating the law. The validity of an inspection is only as good as the type of the inspection utilized. DC-10's were then ordered grounded.

1:48 p.m. Administrator Bond, 48 minutes later, issues a telegram to all operators of DC-10s stating that they are not permitted to make further revenue flights pending receipt of and compliance with amended inspection procedures.

8:59 p.m. FAA, through Leon Daugherty of the Western Region, issues another airworthiness directive, A.D. # 2, which requires immediate, yet detailed visual inspections of a larger area of the pylon. This action was more in line with what the NTSB had recommended 51 hours earlier. Visual inspections continued to be utilized even though X-ray and other scientific inspection techniques were far superior techniques.

Wednesday, May 30

Throughout the morning, officials of APA in Washington and Dallas sought information from the Western Region and Headquarters concerning how many negative and positive reports were being received pursuant to the inspections being made under A.D. # 2. APA was provided no information as a result of these many requests.

6:00 p.m. Mr. Dunne sends a telegram to Leon Daugherty of the FAA's Western Region requesting the particular information on the two DC-10 aircraft which formed the basis of A.D. #2, the number of positive and negative reports they were getting as a result of A.D. # 1 and # 2, the analysis procedures being used, and the number of aircraft that had been returned to service after A.D. # 2. No response has ever been received pursuant to this telegram.

Thursday, May 31

Throughout the morning APA continued without success to obtain answers from FAA officials in the Western Region and Washington Headquarters concerning the information requested in the telegram to the Western Region.

2:35 p.m. At an open meeting of the National Transportation Safety Board, Michael Marks, chief NTSB metallurgist, reports that the broken bolt found in Chicago had not broken and caused the accident, but rather had been broken after another part of the pylon had already broken and separated from the wing.

3 p.m. Following the NTSB meeting in which the bolt was eliminated as a cause of the accident, APA announced that it was requesting that the Administrator of the FAA ground all DC-10s until the reason for the failure of certain parts in the engine support system for the DC-10 has been found and corrective action taken. A copy of the formal demand was delivered to the Administrator. APA once again received no response to that request.

APA's grounding request was based upon the fact that when the bolt was eliminated as a cause, neither the FAA or the NTSB knew the reason for the failure of certain vital parts in the engine support system. At a time when the catastrophic failure of critical parts of an aircraft are unknown, then the wisest course of action would be not to carry passengers until such determination is made.

5:00 p.m. The FAA reports that 68 of the 138 U.S. DC-10s were found to have over 91 problems in engine mounting assemblies. Approximately half of U.S. DC-10s had serious discrepancies.

Friday, June 1

Letter from Congressman Burton to Administrator Bond questioning Bond's monitoring of compliance with A.D.'s and suggesting areas of inquiry which Bond should pursue including inspections more rigorous than "visual" and cures for problems such as "twenty-seven missing attachments" in "one wing pylon upper spar" of "one operator."

Saturday, June 2

3:20 p.m. Martin Clark, the Director of the Bureau of Technology of the NTSB telephoned Charles Foster, Associate Administrator of the FAA for Aviation Standards. Mr. Clark recommended urgent action concerning further inspections of DC-10 aircraft as a result of the NTSB's most recent findings of the investigation of aircraft, N110AA, the American Airlines plane which crashed in Chicago on May 25, 1979. American had found two additional DC-10s with cracks in the pylon aft bulkhead. The crack in the first aircraft was 2 inches long, and the crack in the other aircraft was 5 inches long. It was apparent that the crack in the first aircraft resulted from physical impact having most likely occurred when the pylon was being installed during previous maintenance on the airplane. Maintenance had been performed on the first aircraft on December 7. 1978 (6 months earlier), and on the second aircraft on March 19, 1979 (3 months earlier).

Maintenance procedures required that the pylon be lowered from the wing for installation of new bearings. The American Airlines method involved the removal and reinstallation of the pylon by raising and lowering the pylon with the engine still attached, by supporting the entire assembly from underneath by a specially designed lift truck. NTSB personnel discovered that when reinstalling the assembly, vertical misalignment of just a fraction of an inch could result in a part of the pylon striking the attachment structure of the wing causing the aft bulkhead of the pylon to crack. After the pylon is raised into the wings for attachment, an inspector cannot observe the area that has been cracked. Therefore, any damage which has occurred as a result of this reinstallation procedure would likely be undetected.

The NTSB went on to state that metallurgical examination disclosed that in the aircraft that crashed (N110AA), there was a preexisting crack of about 10 inches in the same area where cracks were being found on the two aircraft which were the subject of the NTSB report. The aircraft that crashed had been subjected to the same engine removal and reinstallation procedure on March 30. 1979 (2 months earlier). The aircraft had acquired 430 flight hours until the time of the crash.

The NTSB noted that McDonnell Douglas Aircraft Company specified removal of the engine before removal and reinstallation of the pylon. However, the Board was aware that another operator had used the same procedure as American Airlines in removing the pylon with the engine attached. It was later learned that both McDonnell Douglas and the FAA were aware of the lift truck procedure. The NTSB stated it was particularly concerned that other aircraft in the DC-10 fleet *may have been damaged* (either as a result of complying with the A.D. # 1 and A.D. # 2) or as a result of regular maintenance, as was the case with the three aircraft referred to in the report. The Board further warned that additional aircraft *will be damaged* as a result of furture compliance with A.D. # 1 and A.D. # 2. The Safety Board then made the following urgent recommendations to Charles Foster of the FAA:

> "Issue a telegraphic Airworthiness Directive to require an *immediate* inspection of *all DC-10 aircraft* in which an engine pylon assembly has been *removed* and reinstalled for damage to the wind-mounted pylon aft bulkhead, including its forward flange and the attaching spar web and fasteners. Require *removal of any sealent* which may *hide a crack* in the flange area and *employ eddy-current* or other approved techniques to ensure detection of such damage. (Class I, Urgent Action) (A-79-45).
>
> "Issue a *Maintenance Alert Bulletin* directing FAA Maintenance Inspectors to contact their assigned carriers and advise them to *immediately* discontinue the practice of lowering and raising the pylon with the engine still attached. Carriers should adhere to the procedure recommended by the Douglas Aircraft Company Service Bulletin which include removing the engine from the pylon before removing the pylon from the wing. (Class I, Urgent Action) (A-79-46)." (Emphasis Added)

Sunday, June 3, 1979

APA filed a complaint in the United States District Court for the District of Columbia seeking to restrain the FAA administrator from allowing continued operation of DC-10 aircraft in the United States until such time as the cause of the left engine separating from American Airlines Flight 191 had been determined and corrective action has been taken to prevent similar occurrences.

The Airline Passengers Association submitted the affidavits of 6 aeronautical and metallurgical experts with their conclusions and opinions on whether the FAA's actions were in accordance with the highest possible degree of safety. Their credentials and conclusions set forth below were unanimously in the negative. The Court, however, denied APA's request for a Temporary Restraining Order.

Brent W. Silver, is an aeronautical engineer who specializes in aircraft safety. He has three academic degrees in aeronautical engineering: B.S., M.I.T., '61; M.S., Stanford University, '63; and Ph.D., Stanford University, '71. His Ph.D. dissertation dealt with aircraft design. After receiving a Ph.D., he continued at Stanford for another year in research into the patterns of aircraft accidents. He has been active in the field of aircraft safety since that time and is a registered professional engineer in the State of California (registration numbers M 016468 and SF 002885).

"Mr. Silver's opinion is that the inspection for cracks can be a difficult and exacting task. It often requires more than just visual inspection. The use of X-ray may be indicated. However, even with these more precise methods, fatigue cracks of critical aircraft components have been missed in the past. It is thus very difficult to assure that all such cracks have been found. Moreover, this difficulty is compounded when the nature of the suspected defect is not well defined."

"Considering the large number of problems found in the latest inspections (68 DC-10s had 91 problems in the pylon) and the uncertainty regarding the cause of the subject accident, it is likely that some potential problem areas may have been overlooked. Until the cause of the accident is better pinpointed and until the inspection procedures are better defined, it is possible that some defects have been undetected. Thus there is no present assurance that the problem has been isolated and corrected."

"The Chicago accident showed the DC-10 to be unable to tolerate the separation of an engine. While aircraft are designed to be generally tolerant to the loss of any one system, DC-10 does not appear to be "fail-safe" to the loss of an engine. Thus there is no assurance of a safety "back-up" if the same or a similar defect should be experienced again."

"Although it may appear unlikely, and it probably is unlikely, it is possible that another DC-10 will lose an engine before the authorities figure out exactly what happened to cause the Chicago crash. Because the DC-10 appears to be intolerant to this failure mode, the separation of an engine could cause a repeat of the Chicago accident."

"As long as the risk of flying the DC-10 remains undefined, it should not fly in regular passenger service. If one is to error in judging this matter, one should error on the side of safety."

DONALD G. COSGROVE of Fort Worth, Texas has a Bachelor of Science degree in Engineering Administration and certificated in metallurgy from the Metals Engineering Institute.

He is a specialist in non-destructive testing and has lectured, taught and written technical papers on the subject of non-destructive testing. He is a Registered Professional Engineer, a Fellow in the American Society for Non-Destructive Testing and has served on the National Board of Directors for the American Society for Non-Destructive Testing. He is a member of the Certification Panel for the American Society for Non-Destructive Testing and is certified by that society at Level III, which is the highest certification level, and is specifically certified in five methods of non-destructive testing, which include radiography, ultrasonic, eddy current, magnetic particle and penetrant testing. Prior to becoming a private consultant, he was employed by General Dynamics as a Process Engineer with responsibility for non-destructive testing and worked closely with aircraft manufacturering research and development. His opinion is that:

"Although A.D. #1 and #2 require extensive visual examination of the engine mount assemblies on the DC-10 aircraft, such visual examinations may not be adequate to ensure the continued safe operation of such aircraft. Visual examinations for fatigue cracks are difficult at best and when reduced to field examination sometimes including the use of drop lights, flashlights and mirrors, such inspections are almost worthless for discovering fatigue cracks."

"Fatigue cracks are among the most difficult to detect and many cannot be detected even by the most sophisticated methods. Visual examination of aircraft components is not sufficient to reveal small surface and subsurface fatigue type cracks which may grow to cause failure of the examined part. Reliability of visual inspections is greatly reduced and influenced by several factors such as, the complexity of the structure examined, variations in lighting conditions, and surface finishes on the parts inspected."

"Where loose bolts or nuts are discovered in an aircraft structure such as the engine mounting assembly, then design defects are likely present in the nut locking capability which deficiencies may lead to premature loosening in even less than 100 hours operation. Such premature loosening of the bolt nuts will influence the growth rate of fatigue cracks in adjoining assemblies."

Mr. Cosgrove's opinion is that "until the deficiency in nut bolt design assemblies is corrected and the critical flaw size of fatigue cracks is established, then the aircraft should remain out of service."

S. Harry Robertson, of Tempe, Arizona is a research professor in the College of Engineering at Arizona State University and the Director of the Engineering Safety Center. Further, he is the President of Crash Research Institute, a private investigative research organization.

In connection with his daily activities, he serves as director of two highly specialized accident investigation courses taught several times a year to various accident investigators, including the NTSB, FAA, U.S. Department of Transportation (DOT), the U.S. Army, Navy, Air Force, Coast Guard, Canadian DOT and many foreign governments. Further, he has been actively involved in aircraft accident investigations for over twenty years, and has conducted more than forty full scale aircraft crash tests, including five airliner size aircraft. Much of the current scientific literature on the subject of crash survivability was written or supervised by him or his fellow researchers.

His opinion on June 2, 1979 was that:

"A. The DC-10 aircraft contains serious defects, unknown at that time, which not only caused the May 25 crash, but, which can cause the same type crash in the near future.

B. The inspections conducted thus far, generally visual, have revealed defects in nearly one half of the aircraft examined. Consequently, a substantial hazard to continued operation of the remainder of the fleet exists.

C. Until the specific defect(s) can be identified and acceptable solutions found, continued operation of the aircraft constitutes a high risk of harm to the passengers. As a result, all DC-10s in service should be grounded.

D. While grounding will result in some inconvenience and business disruption, the potential cost in mass loss of life due to similar occurance far outweights such inconvenience."

THOMAS P. LOMBARDO is an aeronautical engineer and commercial pilot with 36 years experience in the aircraft industry encompassing engineering, maintenance, modifications, manufacturing, certification, and marketing of aircraft and components.

Mr. Lombardo is now President of the LOMTEK Corporation, an aircraft engineering and aviation-consulting firm. He has participated in approximately 300 aircraft accident investigations in this firm since 1964.

Mr. Lombardo's further experience includes:

1. Director of Engineering and Maintenance, Modern Air Transport, operating Convair 990's.

2. Director and Vice President, Production and Engineering, Riley Aeronautics.

Mr. Lombardo's opinion concerning the detachment of an engine from a DC-10 aircraft, if fatigue cracking and/or failure of structural components pertaining to engine attachment has been found in a significant number of aircraft, is that DC-10 aircraft should be grounded until·

1. The cause of the structural failure is determined.

2. The problem is corrected by appropriate design, maintenance or operational changes.

HUGH E. YOUNGBLOOD, JR., is an Aviation Safety Consultant and a Senior Lecturer of Aircraft Accident Investigation at the University of Southern California. His aviation safety consulting activities have included work for the National Aeronautics and Space Administration, the U.S. Forest Service, the Department of Transportation, Canada, and various private industries dealing with flight safety. He has been a teacher of both the technological aspects of aviation accident prevention and investigation and aircraft accident investigation methodology over the past ten years. He is a member of the Safety Committee of the American Helicopter Association and a member of the Society of Air Safety Investigators. He holds a Master of Science degree in aeronautical engineering and has attended various special courses dealing specifically with aviation safety and aircraft accident investigation. He is an active commercial pilot with multi-engine, instrument and flight instructor ratings, with approximately 2,000 hours of total flight time. He has taught various special short courses to airline pilots' associations involving aircraft accident investigation and cause factors common in large, commercial-type aircraft accidents.

Mr. Youngblood's opinion is that "where a wing engine becomes detached from an aircraft and results in the catastrophic loss of control of the aircraft, and if subsequent 'visual' inspections revealed approximately one-half of the inspected DC-10 aircraft to have "serious to minor" defects in the engine mount assembly, and if the cause of such defects is unknown, and the effect on the aircraft, after engine detachment from the aircraft, is not fully known; then a serious risk of harm to the passengers exists by continued operation of the aircraft until the reason/s for such engine detachment is/are known and sufficient preventative steps are taken to insure an adequate level of safety."

He went on to state that "mere visual inspection may not be adequate to insure the level of safety required for this type of wide-bodied aircraft. Until the failure mechanism of the aft support fitting on the DC-10 in the Chicago crash is understood, meaningful visual inspection procedures must be questioned. Until such conditions as caused the crash in Chicago are understood and corrected, an aircraft with such a high passenger load capacity as the DC-10 should be discontinued from public service."

MELVIN WILKOV, received a B.S. degree in Mechanical Engineering at the University of Buffalo in 1954; a Master of Science degree from City College of New York in Mechanical Engineering in 1956; and a Ph.D. from Penn State in 1960 in Engineering Mechanics (the strength and stress behavior of materials, covering such areas as stress analysis, dynamic behavior and material science).

He was employed from 1960-1964 as Assistant Professor of Engineering Mechanics at Penn State, and from 1964 to the present at the University of Texas, Austin as Associate Professor of Aerospace and Engineering Mechanics. He has been employed by Boeing, Republic Aviation, Bell Aerospace in Buffalo, New York, and is presently a consultant for IBM, Lone Star Steel, Tracor, and Texas Instruments, specializing mainly in failure analysis.

He is familar with and has extensively studied the occurence of failures and fractures of metal structures including those of aircraft components. "His opinion is that if there have been fatigue cracks of various sizes and locations discovered in the engine attachment structure of the McDonnell-Douglass DC-10 aircraft, and if such cracks are of unknown origin, and if in the event of a propagation or extension of such fatigue crack, to the point where the engine could detach from the aircraft and render the aircraft uncontrollable, then if such conditions do now exist or could exist in DC-10 aircraft, then continued operation of the aircraft, even after "visual" inspections of suspected areas, would be unsafe and a hazard to passengers and crew."

"If the origin of fatigue cracks is unknown then they can be particularly dangerous. Fatigue cracks of unknown origin can propogate rapidly and cause almost instantaneously failure of the part. The presence of fatigue cracks may not always be readily apparent, even to a trained inspector conducting an extended visual examination including, the use of methods such as dye penetrant."

"So long as the cause of such fatigue cracks remains unknown then their behavior cannot be accurately predicted or their existance necessarily detected. Where a part or component may not "fail safely", (such as an engine detaching from an aircraft and the aircraft remaining in a controllable condition), then unless such "safe failure" is assured, unpredictable fractures of such components, poses a serious hazard to the passengers of the aircraft. When such circumstances exist, the aircraft should be discontinued from service until the cause of the danger is defined and controlled."

5:07 p.m., 26 hours after the telephone recommendation from the NTSB, FAA Flight Standards Service issued a maintenance alert to all FAA regions that each Principal Maintenance Inspector for each air carrier was to assure that all repairs were made in accordance with approved manufacturer practices and procedures; especially with respect to repairs requiring engine removal. The message may have been unclear since American Airlines and others using the lift truck method thought they were already making repairs in accordance with approved practices and procedures.

Monday, June 4, 11:30 p.m., 36 hours after the telephone recommendation from the NTSB, the FAA issued another airworthiness directive ("A.D. #3"). A.D. #3, again required visual inspections of the pylon (after the NTSB specifically stated that visual inspections were inadequate) and only required inspections of a small number of DC-10's, not all as the NTSB recommended.

4:45p.m. a Temporary Restraining Order was issued by Judge Aubrey E. Robinson, Jr. effective immediately, grounding all DC-10s until the cause for the engine separation from the American Airlines flight is identified and sufficient corrective measures have been taken to prevent future occurences of the type that led to the crash of that flight. Judge Robinson stated in his order that "the Administrator has failed to adequately 'promote safety of flight of civil aircraft' in violation of the statutory mandate of 49 U.S.C. §1421."

8:30 - 9:30 p.m. In a telephone conference call among Judge Robinson, the Assistant U.S. Attorney, and A.P.A. Attorneys, the U.S. Attorney informed the judge that the FAA had not followed his 4:45 p.m. order to that time, and that: (1) the FAA could prove that the Administrator was doing everything to ensure the safety of DC-10's and therefore could persuade the judge to dissolve the temporary restraining order; and (2) it would be impossible to effectuate the Judge's order by the time of the hearing at 9 a.m. Tuesday morning. The FAA failed to explain why they could not notify the airlines immediately when the FAA was able to do that in less than an hour on May 29. Based on assurances, the Judge stayed the Temporary Restraining Order until 9 a.m., June 6.

8 p.m. According to the FAA, Administrator Bond and Senior FAA officials learn of serious design defects in the DC-10 aircraft (at the same time that attorneys for the FAA were telling the Judge at the DC-10's were safe and could prove that in court).

11 p.m. According to the FAA, cracks are found in the aft pylon bulkhead of two more American Airlines aircraft in San Francisco. It is learned later that one of these aircraft had been inspected (visually) once, and the other aircraft inspected (visually) twice. It was learned even later that these cracks existed prior to even those inadequate visual inspections.

Wednesday, June 6

3 a.m. Administrator Bond decides to remove the Type Certificate of the McDonnell-Douglas DC-10s effectively grounding all U.S. DC-10s.

4 a.m. FAA transmits to airline operators the fact that DC-10s are to be grounded. (It is interesting to note that the FAA was able to do in one hour what they told a Federal judge could not be done for over 16 hours.)

5:45 a.m. FAA telegraphs McDonnell-Douglas notifying them of the withdrawal of the Type Certificate.

6:48 a.m. Type Certificate of DC-10 is withdrawn when order is served upon McDonnell-Douglas.

2:00 p.m. Bond holds press conference and reveals the following information: he had no explanation for the cracks; there were possible design problems in the rear aft bulkhead; there is sufficient design commonality among the entire DC-10 fleet, including the intercontinental versions; the DC-10 will not have to go through a recertification process; cracks appeared on aircraft whose pylons had not been removed; and the age of the aircraft was not a factor.

Friday, June 22

The NTSB issued Safety Recommendation A-79-52. In that recommendation the Board noted the data which they have obtained during the investigation of the DC-10s indicated that structural damage in the form of "cracks and buckles" might develop in the engine pylon spar webs whenever an engine fails in a catastrophic manner. They also suspected significant failures involving significant imbalance conditions and severe side loads as causing such damage. Therefore, the NTSB recommended as follows:

> "Issue a maintenance alert bulletin to U.S. certified air carriers, and notify states that have regulatory responsibility for foreign air carriers operating DC-10 aircraft, to require appropriate structural inspections of the engine pylons following engine failures involving significant imbalance conditions or severe side loads. (Class I, Urgent Action)."

9:58 p.m. The FAA issued a message that quoted in its entirety Safety Recommendation A-79-52. However, there appeared to be no action required to be taken by the message.

Tuesday, July 10

The United States Court of Appeals for the District of Columbia orders the dismissal of APA suit before the U.S. District Court, noting that jurisdiction at this stage would be before the U.S. Courts of Appeal.

The NTSB ordered the dismissal of the NTSB proceeding between McDonnell-Douglas and the FAA.

Thursday, July 12

APA testified before the Aviation Subcommittee of the Senate Commerce, Science And Transportation Committee. Testifying with Mr. Dunne was: David S. Stempler, APA's Washington Legal Counsel; William Jennings, APA's Director of Aviation Safety; Phillip A. Hogue, former member of the NTSB and consultant to APA; and John Henry Brebbia of Alston, Miller & Gaines, representing APA in the litigation against the FAA. APA presented a summary of the events it was involved with in the DC-10 matter. APA also presented the conclusions of five qualified aviation experts retained by APA who all agree that the DC-10 failed to comply with 21 sections of the FAA's own air transport certification criteria (contained in Part 25 of the Federal Aviation Regulations) and would not now be eligible for a Type Certificate. The experts, their credentials and conclusions are set forth below:

L.A. TOLVE - an aeronautical engineer and a registered professional engineer. He is the President of Tolve, Inc., a consulting firm specializing in dynamic and aeroelastic problems related to aircraft design and testing. Mr. Tolve's experience includes:

1. Sixteen years as an engineering supervisor at Lockheed Georgia Company. He was Manager of its Aeromechanics Division and was responsible for establishing the structural design requirements for the Lockheed 1011, C-130, C-141, Jetstar, and C-5A aircraft. He participated in review of Lockheed Electra wing failure analysis in the early 60's.

2. Fourteen years with the USAF in research and development in aeroelasticity and in the flutter substantiation of all USAF aircraft procured during 1940-1955.

Mr. Tolve's opinion is that the DC-10 does not meet a number of the airworthiness requirements of FAR Part 25, including: FAR 25.305; 25.307; 25.371; 25.601; 25.611; 25.631; 25.671; 25.697; and 25.699.

- THOMAS P. LOMBARDO - (His credentials are listed above) His opinion is that design and structure of the DC-10 pylon is deficient and does not meet current FAR Part 25 airworthiness standards. Specifically, Mr. Lombardo's opinion is that the DC-10 does not comply with the following: FAR 21.21(2); 25.609; 25.571(a); 25.601; 25.611; 15.671(c); 25.697; and 25.1305(d) (3).

IRA J. RIMSON - a registered Professional Engineer (Safety) and a commercial pilot with over 4,000 hours flight time. Mr. Rimson is President of Systems Safety Associates, Ltd. and holds a Master of Science Degree in Aerospace Operations Safety and Management from the University of Southern California. He has had additional graduate study in System Safety at George Washington University and in Systems Engineering at Virginia Polytechnic Institute. From 1975 through 1977, Mr. Rimson was Director of Safety for the Naval Air Systems Command Headquarters in Washington.

Mr. Rimson's opinion is that the record of the accident involving American Airlines Flight 191 reveals numerous critical deficiencies which show the DC-10 to be in violation of various sections of FAR Part 25, "Airworthiness Standards for Transport Category Airplanes."

Specifically, Mr. Rimson contends that the DC-10 does not comply with the following: FAR 25.207; 25.601; 25.671; 25.672; 25.697; and 25.1529.

JOHN B. GALIPAULT - a commercial pilot with more than 7,500 flight hours and extensive experience in flight test work in terrain following and terrain avoidance systems. He has an M.A. degree, has served on the faculty of the college of Engineering of Ohio State University, and is a member of the Society of Experimental Test Pilots.

Mr. Galipault is President of Aviation-Safety Institute (ASI). ASI maintains a current computer data base containing more than 120,000 FAA Service Difficulty (SD) reports. These are reviewed by ASI on a daily basis to identify aircraft discrepancies that might appear critical to airworthiness.

Service Difficulty reports concerning the DC-10 engine mounting-systems have been received by FAA at least as early as December 1973. Continuing SD reports have revealed a chronic situation concerning plyon crack events, corroded bolts, broken bolts and nuts, and damaged pylon webs. Further SD reports deal with the DC-10 leading edge slats and indicate failures such as, broken or frayed extend-retract cables, broken cable pulley mounts, and failed bellcrank drive components.

Mr. Galipault's opinion is that the history of Service Difficulty discrepancies makes it apparent that there are basic design flaws in the DC-10 and violations of certification requirements, including FAR 25.147; 25.203; and 25.601.

NORMAN BIRCH - an aeronautical engineer and commercial pilot with extensive engineering and manufacturing experience. Mr. Birch has particular experience in design and production of slat (metal plates that extend from the front of the wing to increase lift) actuation mechanisms.

Mr. Birch holds a Master of Science degree with a specialization of Aircraft Propulsion; has been a Lecturer in Aviation Safety Technology at the Universtiy of Southern California; has investigated other aircraft accidents involving leading edge slat systems; and has written a Research Report on the design requirements and fundamentals of "no back" slat locking mechanisms.

Mr. Birch's opinion is that the DC-10 aircraft does not meet many of the airworthiness safety requirements of FAR Part 25, including: FAR 25.143(b) (1); 25.143(b) (3); 25.149(c) (5); 25.571(b); 25.571(e); 25.601; 25.671(c); 25.671(e); 25.697(a); 25.701; and 25.1435(b).

Friday, July 13

Administrator Langhorne Bond issued an Order lifting his earlier suspension of the DC-10 type certification and allowing the DC-10's to return to revenue service. In the Order, the Administrator found that the DC-10 series aircraft met the requirements for issuance of a type certificate in that among other things, the aircraft was of proper design and performance for safe operation and met the applicable certification criteria.

Contemporaneously with the issuance of the Order, the FAA issued three amendments to Airworthiness Directives applicable to DC-10 series aircraft. One amendment required detailed and frequent inspection of the pylons; another required certain inspections of the leading edge wing slats' mechanical drive system; and the last required dual sensing systems related to control of the aircraft if a problem should develop.

Monday, July 16

APA and James E. Dunne, II file an action in the United States Court of Appeals for the District of Columbia to review and set aside the Administrator's Order allowing the DC-10's to return to service. The basis of the action is that the Order permitting immediate operation of the DC-10 series aircraft utilizing frequent inspections and not requiring a correction of design defects prior to flight is clearly illegal because it violates the provisions of the Federal Aviation Act and FAA regulations requiring that an aircraft be free of design defects as a basic prerequisite for certification. The Airworthiness

Directives requiring frequent inspections issued simultaneously with the FAA's July 13 Order and the record underlying the decision to issue that Order recognize on their face that the DC-10 aircraft presently has several serious design defects requiring correction. The FAA cannot, consistent with the Federal Aviation Act and FAA regulations, reinstate the type certificate for this aircraft.

Prior to allowing the DC-10 to return to service, the FAA ordered several investigations utilizing FAA's own personnel and outside consultants. Some of the findings and recommendations which addressed design problems of parts of the pylon note that:

> "The obvious partial failures for which the pylon was designed require an augmented inspection program sufficiently reliable to find all cracks, including those caused by inflicted damage, before they can exceed the magnitude of assumed partial failures. Such a program is possible for most portions of the pylon on a long term basis and for some critical portions on a short term basis. However, for two critical portions of the pylon-to-wing attached structure, the reliability of such programs for the life of the airplane fleet is questionable in light of the frequency of inspection needed and the difficulty of the inspection.
>
> For the rear bulkhead assembly and thrust link assembly, reliance on an intense detailed inspection program for a relatively short period of time, i.e., two years is considered feasible. However, for the life of the airplane a REDESIGN to reduce reliance on inspection procedures is essential.
>
> The aft bulkhead loads used in design are highly dependent upon both original assembly tolerance and the maintenance of those tolerances in service. Reliance on initial assembly tolerances and on maintenance is not sufficiently reliable for long term safety. Therefore, REDESIGN of the aft bulkhead to make the structures which are subject to obvious partial failure less dependent on assembly tolerances and on the maintenance of these tolerances in service is essential.
>
> To reduce dependence on maintenance procedures, the thrust link assembly should be REDESIGNED so that any single failure, bolt disconnect or misassembly (such as a single loss of a retainer washer or bolt) will not result in a loss of thrust transmission through this fitting. (Presiding Officer's Report to the Administrator on the Investigation of the McDonnell-Douglas Corporation and the Model DC-10 Aircraft dated July 9, 1979, Vol. II, X-1, X-2; Emphasis added.)

These recommendations acknowledge the serious problems present in the DC-10 series aircraft. The failure of the Administrator to require immediate design changes prior to allowing the carriage of passengers violates the law and the FAA's own regulations. APA's case before the Court of Appeals is continuing and at this point is in the briefing stage.

Ms. **Ferraro**. Please proceed.

TESTIMONY OF DAVID S. STEMPLER, CHAIRMAN, GOVERNMENT AFFAIRS COMMITTEE OF THE BOARD OF DIRECTORS, AIRLINE PASSENGER ASSOCIATION, INC.

Mr. **Stempler**. Ms. Chairperson and members of the committee, I am David S. Stempler, chairman of the Government Affairs Committee of the Board of Directors of the Airline Passengers Association, APA.

I thank you for the opportunity to appear before the committee today, to provide you with APA's views on various bills under consideration and other proposals to enhance the safety mission of the Federal Aviation Administration.

APA is the representative of over 75,000 frequent airline travelers, who average 40 round trip airline trips per year, according to our most recent survey.

APA is vitally concerned with the issues of aviation safety, not only because our charter directs us to be, but because we feel we have an important duty to our members and the general public.

I am sad to say that APA has had a member on almost all of the major commercial airline accidents in the last several years, and we would like that trend to stop.

There are many ways in which we can enhance the safety mission of the FAA. The opportunities for enhancement are so vast that we will only touch on a few in our testimony, and leave to other witnesses the responsibility to inform you in these other areas, which include those issues raised by the GAO report, issues raised by the National Research Council Committee report, and issues with respect to H.R. 7611, which talks about separating the aviation trust fund from the unified budget.

Other issues which we do not include in our testimony, but we have attached for the record, are those issues which relate to aircraft certification and whether that ought to be opened up.

I would like to devote my time today before the committee to the question of whether the FAA should be relieved of the responsibility for the promotion, encouragement, and development of civil aeronautics, under section 103 of the act. If so, should such functions be transferred to the Department of Transportation or to other current or to be formed agencies of the Federal Government.

APA strongly believes that the FAA should be relieved of the responsibility for the promotion function to the extent that the agency is concerned with the economic health and viability of the components of the airline aviation industry.

I want it perfectly clear what we mean. The FAA as restructured to be solely involved in aviation safety must take cognizance of the economic impact considerations of its safety regulations and enforcement procedures.

As Mr. Bond stated, by Executive order, all Federal agencies are required to be aware of the economic impact of their actions.

What we are saying is that those parts of the FAA which are devoted to insuring the economic health and survival of companies in the airline aviation industry, should be removed from the agency. APA has taken this position because there is an inherent potential conflict of interest in the FAA trying to be a strong safety regulatory, on the one hand, and to trying to encourage and promote, and develop the economic health of the industry, on the other.

I will try to briefly touch on some of these things. We have heard many of the arguments against separating the agencies, such as the best way to promote the industry is to have a safe system. That may be true, but it is also true that you are not going to have any airline industry if it is not safe. And we talk about some of the other issues more fully in our complete testimony.

There is another way I want to put this discussion today in some greater perspective. As everyone has said today, the U.S. air transportation system is exceedingly safe. We should also be aware that most of our discussions of safety issues involving the industry concern how we can make that system even safer.

It is important to also understand that the differences among all of us here involve relatively small differences between both points of view. Most of our arguments here are not about the extremes of black and white, but fall in that gray zone, where we argue about the relative degrees of safety. In our discussions of removing the nonsafety function from the FAA, we do not want to suggest that the FAA would ever knowingly countenance an unsafe practice for economic reasons. On the other hand, as I said before, you cannot demand the issuance of safety regulations for design and operation of aircraft without being mindful of the economic consequences and realities of such actions.

We understand that there must always be a compromise between the two, but we want that line moved a little bit closer to safety than it is today. Too often, we feel that the FAA is overly concerned with economic impact considerations, adjusting its actions within the gray zone toward the industry.

Reasonable people might differ as to where the decision line ought to be in the gray zone, but again, we would like to see the line moved a little more to the safety side.

One of the things we want to bring to your attention today is the fact that probably the best way to evaluate this question of whether or not the FAA has at any time leaned more to economic considerations than safety considerations is to divorce ourselves a little bit from the rhetoric we have heard today and see how they have actually performed in given situations.

Mr. Levitas brought up a particular comment on his experiences in how long the FAA has taken to take actions on the cabin safety area, and it is particularly heightened by the crash in Saudi Arabia last night.

The incident that APA is most familiar with is the actions and responses of the FAA following the crash of American Airlines DC-10 flight 191 in Chicago last May. As this committee is aware, APA was deeply involved in legal proceedings against the FAA, which resulted in the grounding of the DC-10's.

Our purpose in discussing this issue is not to rehash the whole DC-10 issue and certification and other related issues, but to use it as a basis with which to match FAA responses to NTSB and other recommendations made during the given time period.

And we have a chart in our prepared testimony in which we try to track for the committee the time frame that occurred—NTSB recommendations matched against FAA responses, the amount of time it took the FAA to act, and things like this. I will try just briefly to touch on some of them.

The crash, as I said, took place on May 25. On May 27, the NTSB issued a recommendation that said, "Inspect all pylon attach points on all DC-10's." The FAA came back with an order that said, "Just replace the bolts in one of the three attach points and make a visual inspection of a limited part of the pylon."

The FAA did not require the inspection of all attach points, as recommended by the NTSB, and the FAA also chose visual inspections of these thick, complex metal structures, as opposed to more reliable methods of nondestructive testing, including radiography, ultrasonic, eddy current, and others.

The NTSB had issued this recommendation under what they call a class I, urgent status, meaning commencement and completion of action is mandatory to avoid the imminent loss of life or injury and/or extensive property loss.

The FAA in their order required that compliance was to be by 3 a.m. Pacific daylight time, which was 33 hours after the NTSB recommendation. The time selected was midnight Pacific daylight time, which would have been after the carriage of the traffic on Memorial Day. And we asked ourselves why did they wait until all the traffic was cleared out, but for the fact that they were concerned about disruption of the system.

So we saw the NTSB quite concerned, and we all recall what was going on during that period. I think Sunday was the day that they found the bolt, and there was concern about the status. And we see the FAA waiting until the least disruptive airline traffic effect could occur.

At 11 a.m. on Tuesday, May 29, a DC-10 was discovered with a 27-inch crack in the spar web. At about 1 p.m. that day, FAA ordered the grounding, and they issued another airworthiness directive, which required a detailed, though still visual, inspection of a larger area of the pylon.

So basically, it took them about 51 hours to get to where the NTSB had recommended.

I will try to move a little more quickly in light of the time. But the most telling thing for us that really propelled us into court was the fact that on Saturday, June 2, after the FAA had reported that almost half of the DC-10's in the fleet had some serious cracking, the NTSB learned that two additional American Airlines DC-10's had cracks in them—these were the cracks found in the Tulsa base of American Airlines.

They reported that maintenance procedures used by American in removing and reinstalling the engine and pylon may have been at fault at that point. The NTSB warned the FAA that after the pylon is attached, an inspector cannot observe visually that area that had been cracked, and the crack could go undetected. So, in the strongest language that they had, they said again, look at all DC-10's and do not use visual inspections because you cannot see the damage.

The FAA responded with airworthiness directive No. 3, which again required visual inspections. Again they did not require the inspection of all DC-10's; they just required the inspection of some of them.

As you review the actions taken by the FAA on the DC-10, you will notice that many of the actions fell far short of what the NTSB recommended. We have shown delays of 33, 51, and 56 hours. Maybe in hindsight, at this point in time, those do not seem like very long times, but when we are dealing with aircraft that were actually operating with people on them, it was a substantially long period of time.

We saw an excessive reliance on unreliable visual inspections of complex metal structures, when more reliable scientific methods were available.

The only conclusion that we could come to was that the more complex, nondestructive testing such as X-rays, although far more reliable, were more costly and more time-consuming.

The most telling aspect in the DC-10 case was that, from the time of the accident on May 25 until the time the DC-10 was grounded on June 6—it was grounded for 38 days subsequently the FAA really did not know what was wrong with the airplane. After two short groundings, they learned that almost half of the DC-10's had problems in the engine support structure. Instead of grounding the airplane until they figured out what was wrong, they allowed the plane to operate until a court order was issued and more planes were found with cracks.

Failure to act decisively to protect the public, when they did not know what was wrong with the plane can only be attributed, we believe, to being overly concerned with the sales and operating prospects of the aircraft. APA feels that this emanated from their statutory duty to be concerned with the promotion, encouragement, and development of the industry. It is for these reasons that APA believes that the FAA should be relieved of this statutory charge.

With respect to the specific bills before the committee, a number of bills have been presented to restructure the FAA.

Before commenting on these bills, I would like to state our philosophical position. As noted, we believe the FAA has its greatest difficulty when it tries to balance safety needs against financial ones. We also note for the record that the agency has problems balancing safety and political issues, as we see with the Washington metropolitan airports issue. It is for these reasons that we seek the removal from the FAA of concern for the economic health of the industry as well as those aspects of the agency which are embroiled in intense politics such as ADAP grants and operation of Washington metropolitan area airports.

The functions now performed by the FAA that we support removal of are: Promotion of aircraft sales and air travel. Administration of the ADAP program, and operation of Washington metropolitan area airports.

The question of whether the air traffic control system ought to be removed from the FAA is a question that the APA still has under consideration. The ATC system is heavily involved with a safety function, but is also involved in ADAP expenditures through funding of facilities and equipment. Since the ATC system has some financial aspects, and since it is vulnerable to political pressure which could result from strikes—that we have heard about today—radar outages, and delays, APA is leaning toward the removal of the ATC system.

With respect to the three bills before the committee, we have concluded the Mr. Matsui's bill, H.R. 7850, comes closest to our determination of the way the restructured FAA should look. With respect to Mr. Levitas' bill, H.R. 6771, we can also support that. However, we were not clear as to where ATC fell under that. I understand from Mr. Levitas' staff that it would fall within the safety purview.

With respect to H.R. 351, we can also support an independent FAA.

We also support most strongly H.R. 7611, which would move the receipts and disbursements of the airport and airway trust fund from the budget.

That concludes our statement. I would be happy to answer whatever questions you might have.

Ms. **Ferraro**. Thank you, Mr. Stempler. I would like to focus in for just a minute on the air traffic control system. Your testimony indicates that you are considering advocating removing the air traffic control system from FAA since the ATC system is vulnerable to, I think you put it, political pressure which could result in strikes, radar outages, and delays. We had testimony on that just minutes ago.

If ATC were removed from FAA, would controllers still have the ability to exert pressure through strikes and delay?

Mr. **Stempler**. Yes, there is no question about that.

Let me raise one other aspect of the ATC, and why we support its separation. When you separate the two functions, safety and nonsafety, you have, as Mr. Matsui's bill talks about, a safety administration which would involve rule promulgation and would involve certification of aircraft and equipment. On the other side, you have the clearly financial aspects of the aviation industry not related to routes and rates but those related to airports and other kinds of functions like that.

The kind of function which is represented by the ATC system, which represents almost half of the FAA, is more akin, in terms of its bureaucratic arrangement and type of operational function, to operations that it would be to the safety regulatory staff.

But, yes, you are absolutely correct in the fact that pressures will exist. The pressure and power results from their ability to do what has occurred in Chicago, to basically slow down the system to reach their demands.

Ms. **Ferraro**. I still do not really get the delineation that you are making. Are you saying that, if you put the ATC under the safety division, if there were two divisions, that——

Mr. **Stempler**. Safety and operations.

Ms. **Ferraro** [continuing]. That they would then not be able to, if they did strike or did slow down, it would not be able to achieve the monetary success that they were attempting to get because that is under a separate agency?

Mr. **Stempler**. No. The point I am trying to make is this. I think they certainly would have that ability. But with respect to the impact on the safety staff, the way we see the safety operation is that you are certainly going to have a part of the safety staff that is going to be involved in air traffic control in terms of establishing guidelines, in terms of establishing safety standards, TCA's. It is the question of where you put the operational people. To the same extent that we will have airport certification and the safety staff, it will be the job of the operational people to see to what extent these particular ILS's or projects would be funded. You separate the funding from the standards staff.

As I said, we do not have a strong position on where ATC ought to to placed, but its function and bureaucratic setup would be more akin to an operational side than a real safety side.

Ms. **Ferraro**. The difficulty I have is that, even if you separate them, how does that make the standards any better?

Mr. **Stempler**. I think we are, as I said, still susceptible to the pressures that would exist on the air traffic control system. The question is what kind of pressures are also placed on the safety-promulgating staff. If it is all part of one big package, the political pressure can back in through that way.

Ms. **Ferraro**. You mentioned certification. Your testimony indicates that you are submitting for the record your position on the use of designated engineering representatives and the aircraft certification. I would appreciate a brief discussion of your position on that.

If you oppose the DER system, would you please indicate the steps which FAA should take to expand and upgrade its engineering staff.

Mr. **Stempler**. I do not have a copy; I would have to get it out of my case with respect to that. But we supported a lesser reliance on designated engineering representatives than now exists.

The conclusion of the National Research Council report was that the designated engineering representative structure as it exists today is satisfactory, but they would like to see a greater enhancement of the engineering capabilities of the FAA.

Our conclusion is that we would like to see a greater enhancement of the engineering capacity and a less of a reliance on the designated engineering reps. The reason is that we believe there is a potential, and inherent conflict of interest that exists. Even though we may have not seen any particular example, its inherency exists.

Ms. **Ferraro**. In your testimony you suggest that the administration of the airport development aid fund be removed from FAA. Are you including the facilities and equipment program in this recommendation? Don't both the aid to airport program and the facilities and equipment program promote safety?

Mr. **Stempler**. Yes, I think to a degree that we have to understand, as I understand it, these two functions are now separated within the FAA themselves. There is a certification side in terms of airport certification. Then there is a funding side of FAA that handles the funding of those particular ILS or other needs that are set out. It is the same with facilities and equipment. You make a determination as to whether the particular facility is needed, and then you can fund it separately.

What we are suggesting is that by splitting the two, you would still have to have the airport certificated the same way that they are now. The funding would be handled by the operational side.

Ms. **Ferraro**. It seems to me that everything is so interconnected that to divide them, as is being attempted by the pieces of legislation, seems almost to be a false division. It just seems incapable of being done. Every one of the things that we have discussed have an economic side as well as a safety side. Every delineation we have attempted to make here with your testimony just seems to bring that out more clearly. They just intermingle so that they cannot be divided.

Mr. **Stempler**. I think our attempt here would be to isolate the safety or the regulatory side a little more from the funding side. Oftentimes the funding side might control the regulatory side to a degree, particularly if ILS is needed on a particular runway.

It might be backed in that way. We would like the safety staff to be operating within their own arena. We would like to see the determination as to ILS's and VASI's and others made on their own merits and then the funding handled separately from these standards. We found the standards of the FAA to be wholly inadequate at this point. Levels for placement of ILS's, VASI's, and other types of equipment are way too low. We hope that this process might help.

Ms. **Ferraro**. I have one final question. In the testimony which you submitted for the record, you urge that an independent safety review board be appointed to settle disputes between the National Transportation Safety Board and the FAA. Why do you think that experts in a safety review board would make better safety decisions than the FAA?

Mr. **Stempler**. I am not sure we made that recommendation in our testimony.

Ms. **Ferraro**. In the testimony that you submitted—you said you were putting additional testimony in the record. That was one of the recommendations that was set forth.

Mr. **Stempler**. Oh, in the prior testimony.

Ms. **Ferraro**. Yes, the January testimony.

Mr. **Stempler**. We had noticed that there had been a fair number of disputes between the NTSB and the FAA. We became concerned about that. Some of our concerns about the authority of the NTSB have been responded to directly by NTSB. They have withdrawn their support from the concept of them having authority to issue orders the equivalent of airworthiness directives and withdrawing the type certificate of an aircraft. So, I think we can basically withdraw that conceptual problem.

Ms. **Ferraro**. I will turn the Chair back over to the chairman.

Mr. **Anderson**. Mr. Hutchinson?

Mr. **Hutchinson**. I have no questions, Mr. Chairman.

Mr. **Anderson**. Thank you very much, Mr. Stempler, for your presentation. Thank you, Ms. Ferraro, for sitting in.

Our next witness is Hon. G. H. Patrick Bursley, member of the National Transportation Safety Board. We do have your prepared statement here. It will all be made a matter of the record.

[Statement referred to follows:]

STATEMENT OF G.H. PATRICK BURSLEY, MEMBER, NATIONAL TRANSPORTATION SAFETY BOARD

Mr. Chairman, I am very pleased to be here this morning to present testimony on behalf of the National Transportation Safety Board dealing with enhancing the role

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of the Federal Aviation Administration in assuring aviation safety. Before I begin my testimony, I would like to take this opportunity to introduce members of the Safety Board staff accompanying me today. To my right is Mr. S. Walter Sweet, Director, Bureau of Technology, and to my left is Mr. James W. Danaher, Deputy Director for Operations, Bureau of Accident Investigation.

As you know, Mr. Chairman, the National Transportation Safety Board is an independent agency with the statutory mandate to investigate catastrophic accidents involving all modes of transportation. The Board is directed to investigate all civil aviation accidents to determine probable cause, and to make recommendations to prevent the recurrence of such accidents. In addition to its primary accident investigation role, the Board is required by the Independent Safety Board Act of 1974 to "Assess the effectiveness" of other Government agencies in the area of transportation safety.

In carrying out this mandate, the Safety Board has worked closely through the years with the Federal Aviation Administration in attempting to assure both the Congress and the American people the highest possible level of aviation safety. There is no question that, overall, the record of the Federal Aviation Administration is an excellent one. Our Nation's air transportation system is unparalleled in its safety record as well as in its size and complexity. Statistically, the numbers are impressive. In 1979, for example, the Nation's scheduled airlines alone operated 12,000 flights a day in the air traffic control system. In human terms, last year 318 million passengers were safely transported a total of 256 billion passenger miles. As part of its mission to assure "The highest degree of safety" in flight, the FAA used almost half of its staff of over 57,000 to handle all phases of Air Traffic Control—to operate the 400 airport control towers and 25 air route traffic control centers across the Nation. The way they do their job is reflected in aviation accident statistics which show that the U.S. passenger fatality rate for the last 5 years has averaged well below that of the rest of the world aviation community. It is also significantly lower than in most other forms of transportation. We are concerned, as are you, Mr. Chairman, with how to make a good system better. While the Board has enjoyed a largely harmonious working relationship with the Federal Aviation Administration over the years, this has not prevented us from taking the agency to task when we have felt that it has not moved aggressively to seek out solutions to safety problems or, when solutions were apparent, to implement change in a timely manner. This is how it should be. While we have been openly critical of the Federal Aviation Administration when we have felt such action warranted, it is important to note that last year the FAA took acceptable action on 87 percent of the Board's recommendations to that agency. This is considerably higher than the acceptance rate of most other DOT Modal Administrations.

The question before this Committee today is how to improve the current system. Is the failure of the FAA to move more aggressively in certain safety areas—from the Board's perspective such areas as commuter surveillance of cabin safety—due to (1) the institutional structure, i.e., The Federal Aviation Administration is an agency within the Department of Transportation; (2) the dual statutory mandate of the Federal Aviation Administration to insure aviation safety while at the same time promoting civil aeronautics; or (3) more basic internal management problems which have transcended the efforts of individual administrators?

Let me comment first on the institutional structure. The Federal Aviation Administration was formally made a part of the Department of Transportation in 1966 when Congress created the new department to "assure the coordinated, effective administration of the transportation programs of the Federal Government." A brief review of the legislative history of the new department shows that the Congress carefully considered the issue of placing the FAA within the Department of Transportation. The Congress was especially concerned that this transfer do nothing to derogate aviation safety. The Senate Commerce Committee, calling the issue of aviation safety "the most troublesome problem facing the committee" inserted a special provision in the authorizing statute for the Department of Transportation which provided that the functions, powers and duties relating to aviation safety, vested in the Secretary, be transferred to the Administrator of the Federal Aviation Administration, and that his decisions pursuant ot the exercise of those functions be administratively final with appeals only to the National Transportation Safety Board or directly to the courts. By taking this action, the Congress sought to insulate those functions pertaining to aviation safety in a manner that would assure the continuation of what was perceived to be an excellent system.

A review of our aviation accident investigations since the establishment of DOT as well as our recommendations to the Federal Aviation Administration does not identify any safety issues directly related to the FAA's institutional placement within the department. Similarly, the board has not perceived the efficacy of the

Coast Guard, the NHTSA, the Federal Highway Administration and the Federal Railroad Administration in their respective safety roles to have been affected adversely by their being a part of DOT.

Second, with respect to the dual statutory mandate of the FAA, the board has not found the statutory language of section 305 of the Federal Aviation Act of 1958, which directs the administrator to "encourage and foster the development of civil aeronautics and air commerce in the United States and abroad," to have had an identifiable adverse impact on aviation safety.

The Federal Aviation Administration's promotion of civil aviation—and the assistance related aspects of that responsibility—are closely related to its safety role. The development of the microwave landing system, the installation of an instrument landing system, or the addition of a frangible approach light system at an airport may well involve the "promotion of civil aviation." At the same time the safety board views these endeavors as safety oriented. Any conflict between activity to insure aviation safety and activity to promote civil aviation is clouded by the difficulty in identifying which functions, powers and duties of the FAA fall exclusively in the category of promotion of civil aviation. In the same respect, it is difficult to determine which FAA employees are involved exclusively in the promotion of civil aviation who are not also involved in insuring safety.

The board is aware that the Federal Aviation Administration has come under considerable criticism from various quarters on the ground that the dual mandate of the FAA has led the agency to be far too reliant on industry to carry out certain safety functions—to the detriment of safety. This criticism has been directed primarily towards the designated engineering representative (DER) system in aircraft certification where a company employee designated as a DER may be perceived as serving two masters—the aircraft manufacturing firm that pays him and the Federal Aviation Administration to which he is supposed to report any potential safety problems. Similar criticism has been directed toward the designated manufacturers inspection representative (DMIR) system through which the FAA uses designated company employees to control the quality of production of aircraft.

The safety board has not undertaken a comprehensive review of the certification process which would allow us to comment in detail on this problem; however, as a result of our aviation accident investigations, particularly the one concerning the DC-10 crash in Chicago in May 1979, we have made several recommendations both to improve the certification process as to designs as well as the maintenance program as the aircraft moves into actual service. Many of these recommendations are mirrored in similar findings in the National Academy of Science's (NAS) report on aircraft certification.

The board concurs in the great majority of the recommendations made in the NAS report on certification. We agree with the panel's position that the DER system, with certain quality assurance modifications, should be continued. We strongly agree with the need to (1) develop standards to assure that an aircraft is designed to fly after structural failures which of themselves do not preclude continued flight, (2) increase the emphasis of the FAA on quality assurance in all phases of the production process, (3) increase FAA surveillance of airline maintenance operations, and (4) review and update the licensing and training certification requirements for airline maintenance personnel as well as the information and data gathering system currently in use by the FAA. We also support the panel's recommendation that the FAA adopt a longer range objective to improve type certification by scheduling a series of milestone reviews to examine fundamental concepts and to assure compliance with the full intent of the safety regulations.

While supportive of the National Academy of Science's report, we would like to suggest one further step, and that is a review of the so-called grandfather clause. We would like to see a rule requiring the periodic reexamination of the certification criteria for all aircraft in the light of new technology. We believe that safety is compromised by the present situation in which new aircraft are produced today to requirements which were appropriate 20 years or more ago when the aircraft model was first certificated.

Finally, I would like to turn to internal management. It is in this area where the safety board feels improvement of the FAA's safety mission might be addressed the most successfully. We hasten to point out that the safety board is not a management consultant agency; however, from our observations we feel that the FAA could take certain positive steps in internal management which would improve its capacity to fully implement its safety mission. Those steps include: (1) Institution of a system to assign priorities to safety goals; (2) revision of the rulemaking process to establish objectives, priorities and schedules for rulemaking in conjunction with identified safety priorities; and (3) adoption of a policy on the part of management to undertake interim corrective actions while comprehensive solutions are developed.

First, let me briefly turn to the need for a system to assign priorities to safety issues. Over the years the safety board has been continually frustrated when, in making safety recommendations to the Federal Aviation Administration, it has found that the FAA does not have an internal system to identify a safety issue as carrying a priority. We agree with the observation of the General Accounting Office in its report, "How to improve the Federal Aviation Administration's ability to deal with safety hazards," that the failure to have such a system has resulted in the FAA's actions being perceived as "reactive and ad hoc instead of anticipatory and preventive." (p. 18)

Let me describe an example of this problem—the failure of the FAA to systematically identify child and infant restraints as a priority safety issue has been of concern, both to the board and to the General Accounting Office. The FAA has been conducting research into the problem of child restraints for air carrier aircraft since the early 1960's. In October 1973 the flight standards service authorized a "high priority" project on child restraints. This project was cancelled shortly thereafter only to be reinstated in December 1977. Once again, the project was cancelled and then given a new life in January 1979 when the administrator formed an agency task force on the subject. Today, we still have no standard on child restraints.

Even in the instances where the FAA has identified a safety problem and is aware of a solution, we have seen instances in which there has not been a timely response. For example, in 1972 the FAA was aware of problems with the cargo door on the DC-10. 346 lives were lost in a crash over Paris before mandatory corrective action was ordered. Similarly, in 1972 the board, as a result of an accident, issued recommendations to the FAA regarding the installation of adequate nose baggage door locks on certain small general aviation aircraft. The FAA's response was to issue a safety alert on the subject rather than to require that an adequate locking device be installed. In May 1975 the FAA again issued an alert on hazards associated with the improper security of nose baggage doors. Finally, after a March 1, 1979 fatal commuter accident which occurred when the nose baggage door opened on takeoff, the manufacturer of one model aircraft, independent of the FAA, undertook a voluntary program to provide a secondary locking system. We do not regard corrective action to be unnecessarily burdensome. Yet other aircraft are still not required to have secondary locks.

The second area of concern to the board—the current rulemaking process—follows logically from our first concern. Given that the FAA has no internal system for identifying safety priorities, its rulemaking process reflect similar deficiencies. As observed by the National Academy of Science, there is no "systematic means for determining where new rules are needed, the ranking of priorities, and the development of the necessary technical bases, where absent, for rulemaking." (p. 38)

One example concerns the development of safety standards for the commuter airline industry. In May 1972 the safety board conducted a public hearing to explore commuter and air taxi industry safety problems. Industry and government witnesses testified to the need for a new, up to date and more stringent part 135 to regulate the growing air taxi and commuter industry. Subsequently, in September 1972 the safety board issued a series of formal recommendations that part 135 be revised and upgraded. A new part 135 was not adopted until late in 1978—six years later. Some recommendations to the FAA first made in 1972, such as flight and duty time limitations for commuter pilots, still have not been implemented.

Finally, Mr. Chairman, we agree with the General Accounting Office that the FAA has not adequately explored interim corrective measures to safety problems. In the areas of frangible runway approach light towers, cabin safety and child restraints, the FAA has not been willing to move forward with even an interim measure that might afford protection against the hazards. It is interesting to note that this attitude prevails despite a stated willingness on the part of the current administrator to move ahead with available technology. To quote from Administrator Bond in testimony on cabin safety before the Oversight and Review Subcommittee in April 1979: "As anyone who has been associated with research and development work knows, there are always new and different ways to look at a problem. And sometimes, no matter how long you examine an issue, you find that no one solution presents itself as a panacea. Sometimes it becomes necessary to get a fix on technology as it exists, instead of waiting to see what is just around the corner that may be better." (p. 186)

We believe, Mr. Chairman, we have a good aviation safety system. Nevertheless, we can make it better. We believe that the necessary measures to enhance the FAA's present performance can be effected within the present structure of the FAA if changes are made in the areas we have just enumerated.

Mr. Chairman, this concludes my prepared remarks. My staff and I will be happy to answer any questions.

Mr. ANDERSON. Please proceed.

TESTIMONY OF G. H. PATRICK BURSLEY, MEMBER, NATIONAL TRANSPORTATION SAFETY BOARD, ACCOMPANIED BY S. WALTER SWEET, DIRECTOR, BUREAU OF TECHNOLOGY; AND JAMES W. DANAHER, DEPUTY DIRECTOR FOR OPERATIONS, BUREAU OF ACCIDENT INVESTIGATION

Mr. BURSLEY. Mr. Chairman, I am accompanied by Mr. Walter Sweet, Director, Bureau of Technology, who is on my right; and Mr. James W. Danaher, the Deputy Director for Operations of the Bureau of Accident Investigation.

We appreciate the opportunity to be before you to present testimony regarding the enhancing of the role of the Federal Aviation Administration in insuring aviation safety.

In our submission to the committee, we discuss three possibilities that might hamper the Federal Aviation Administration in the execution of its safety duties. One is the institutional structure. By that we refer to its inclusion within the Department of Transportation.

Second is the dual statutory mandate of the Federal Aviation Administration to insure aviation safety while at the same time promoting civil aeronautics.

Third is whether there are more basic internal management problems which have transcended the efforts of individual administrators.

We recognize that the Federal Aviation Administration was made a part of the Department of Transportation after a very conscious and deliberate review of its proper placement in the Government structure in 1966.

We note that during that review the Congress went to great pains to identify the purely safety functions of the Federal Aviation Administration and mandated that they be delegated to the Administrator of the FAA.

In reviewing our accident investigations, we have not been able to identify any safety issues directly related to the FAA's institutional placement within the Department of Transportation.

In examining the mandate to the FAA to encourage and foster the development of civil aeronautics and air commerce in the United States and abroad, we again have not been able to find any identifiable adverse impact on aviation safety.

We note that in most areas it is exceedingly difficult really to isolate what might be called by some a promotional feature from its safety implications. I did note during the testimony of Administrator Bond that a number of minor functions were identified which were purely promotional, but he also pointed out that a number of activities which do promote the utilization of an airport carry a very substantial safety implication. We referred to some of those points in our prepared testimony, particularly with respect to the development of microwave landing systems, the installation of ILS's, and improvements such as installing frangible approach light system towers.

We specifically comment in our testimony with respect to the DER system, noting that it has been the subject of criticism. We see the problem more as one of perception than of fact.

We did, in connection with our DC-10 investigation, make several specific recommendations regarding the certification process. We think we dealt with the role of the DER in the area at that time sufficiently to be convinced that the position taken by the blue ribbon study that the DER system is essentially sound but may need some shoring up is the appropriate view.

A number of the other recommendations in the blue ribbon study were examined by our staff. We would like to indicate our particularly strong support for the following recommendations that standards be developed to insure that an aircraft is designed to fly after structural failures which of themselves do not preclude continued flight, increase the emphasis of the FAA on quality assurance in all phases of the production process, increase the FAA surveillance of airline maintenance operations, and review and update the licensing and training certification requirements for airline maintenance personnel.

These recommendations to some degree mirror earlier recommendations made by the Safety Board.

We do suggest that there is one important further step that is not addressed in the blue ribbon study. That is the grandfathering of design standards. We would like to see a rule requiring the periodic reexamination of the certification criteria for all aircraft in the light of new technology. We believe that safety is compromised by the present situation in which new aircraft are produced today to requirements which were appropriate 20 or more years ago when the aircraft model was first certificated.

We examined the GAO report and our experience with the FAA response and followup to our safety recommendations. On the basis of those examinations, we feel that the heart of the FAA's problem is its management practices and that attention to a more formal structure to systematize and assign priorities to its safety goals would be very useful.

We think that the rulemaking process of the FAA would concomitantly be improved if there was such a systemized examination of safety issues.

Finally, we note the frequent reluctance of the FAA to undertake an interim step in solving a safety problem while waiting for a more comprehensive solution to be developed. The Administrator himself spoke at some length on this in the latter part of his testimony. I think the problem is recognized by FAA, at least by the Administrator; but, if there is a general area where we have had differences of views with the FAA, it does lie in that area.

Mr. Chairman, I believe that adequately summarizes the highlights of our statement. I would be very happy to answer any questions the committee might have.

Mr. **Anderson**. Thank you, Mr. Bursley, for your presentation.

On page 10 of your testimony you state that you agree with the blue ribbon panel that the designating engineering representative system should be continued.

I would appreciate your comments on the advantages and disadvantages of this system.

Mr. Bursley. As I mentioned in my summary, I think the principal disadvantage is an appearance of evil; the fact that the DER's are on the payroll of the company and yet are performing quasi-official functions on behalf of the FAA does, at first blush, present some dilemmas. However, the practical matter of reviewing all the drawings, all the calculations that go into a modern aircraft, would require a tremendous expansion of the size of the FAA. It would probably involve the FAA employees having to become melded into the manufacturer's organization to really understand the product that in a way might result in similar confusion as to role as is asserted exists right now with DER's.

With selective review of the calculations and with appropriate selection of focal points for attention, I think it is possible for the FAA to keep a very complete handle on the certification process using the DER process.

Mr. Anderson. I agree with you quite a bit on this.

I realize we must have the designated representatives because we really are not able to get the people in government that can do a similar job. But I feel that there is a need for the FAA to have a better oversight of the designated representatives and what they are doing. Where I have checked on it, I have found it has been very, very thin or very little oversight on the part of the FAA of the designated representatives.

Mr. Bursley. Mr. Chairman, I do not believe that there is any Safety Board study which has gone into a detailed examination of the exact degree of surveillance which the FAA does carry out over the DER's. I think it is clear from the blue ribbon report that the kind of a look which that group took suggested that the FAA does need to tighten up the surveillance of what the DER's do and the points at which it conducts that surveillance.

Mr. Anderson. And that would have to be done by FAA personnel who were also qualified to know what they were checking on, too.

Mr. Bursley. That is correct, sir.

Mr. Anderson. In your prepared testimony you suggest a ruling requiring the periodic reexamination of the certification criteria for all aircraft in light of new technology. You indicate your concern for the present regulatory system under which aircraft may be produced today under requirements imposed when the aircraft model was first certificated.

Is your concern here mainly theoretical? Or have you encountered specific problems with the inadequacy of the standards applied to aircraft certificated 20 years ago?

Mr. Bursley. Mr. Chairman, I think it goes beyond a theoretical concern. The Board recently completed a study of some Beech aircraft which were certificated for production some years ago in respect to the nonstandard design of their control panels and the inadvertent pulling up of landing gear just before landing when it was intended to actuate the flaps. That plane was first certificated years ago, but it is still being built with the same type of control installation under its original certification. We would believe that a plane should not stay in production that long with the same criteria that were applied originally.

As an example, in the air carrier field, the flight data recorders that are being installed in Boeing 727's today are the old scratch type recorders. Any aircraft certificated more recently would have a digital type recorder. The basic instrumentation on the 727, which has been updated, is, to my understanding, such that feeding a digital flight recorder would not present a serious problem. Yet, it is clear that the scratch flight data recorder is well behind the art for current aircraft production.

Mr. **Anderson**. In your testimony you make a number of safety management recommendations, some of which parallel the GAO report. Is it your belief that these management reforms can be instituted administratively? Or is the problem serious enough to require legislative action? In other words, how do you propose that we get that moving in these areas?

Mr. **Bursley**. My impression, Mr. Chairman, is that none of the changes that we suggest would require legislative action. How do we get the FAA to move in these areas? I would suggest that hearings such as this probably get Mr. Bond's attention quite emphatically. I would say that is probably the best vehicle available.

Mr. **Anderson**. Do you believe that any of the bills that we are considering today would make our aviation system safer? Do you think that any of these bills would make the system less safe?

Mr. **Bursley**. Mr. Chairman, the Board was not able to identify anything in these bills that it felt would clearly enhance safety. In terms of a derogation of safety, I will express my own personal view that splitting up functions which in day-to-day fact closely interlock with each other probably is not helpful to safety. I might, by way of example, suggest that the air traffic control system, is dependent on equipment that is installed in an aircraft which functions completely harmoniously. I can see some possibilities in the splits suggested here that you would have one agency regulating what was in the aircraft, and another putting into place an air traffic control system that would not be compatible. I think there are a number of other areas that could be identified of similar derogation of safety just by the fact of making communication more difficult between the parties actively engaged with the problem.

Mr. **Anderson**. In your testimony you indicate that last year the FAA accepted 87 percent of the NTSB's recommendations. Have the remaining 13 percent been rejected?

Or are they pending? Do the 13 percent include any recommendations which you feel are critical to air safety?

Mr. **Bursley**. Mr. Chairman, my understanding is about 11 percent have been rejected. I would like to furnish for the record the response to the second part of your question, if I may.

Mr. **Anderson**. No objection, so ordered.

[The following was received for the record:]

NTSB SUBMISSION

The question of which recommendations are critical to air safety is difficult to answer. All of the Board's recommendations have lifesaving potential, and range in nature from suggesting increased FAA surveillance of commuter operations to requiring that all passenger-carrying air carrier aircraft be equipped with floatation device seat cushions. The Board's management is presently engaged in a review of the safety recommendation process and is hopeful that criteria for prioritizing recommendations can be established so that critical areas in transportation safety can be highlighted while at the same time, moving forward on all safety recommendations. We have attached a summary of the 11 recommendations which are still open, unacceptable action for the Committee's review.

NTSB RECOMMENDATIONS TO FAA
OPEN UNACCEPTABLE AVIATION SAFETY RECOMMENDATIONS
FOR 1979

LOG NUMBER: 0984
RECOMMENDATION NUMBER: A-79-020
FILE TYPE: RECOMMENDATION
DATE OF ISSUE: 79 MAY 01
MODE: AVIATION
NTSB PRIORITY: CLASS II
RESPONSE-DUE DATE: 79 JUL 30
NTSB STATUS: OPEN - UNACCEPTABLE ACTION
NTSB FOLLOW-UP DATE: 79 AUG 30
CLOSEOUT OR MONITOR DATE:

ABSTRACT

ON MARCH 1, 1978, A CONTINENTAL AIRLINES DC-10 OVERRAN THE DEPARTURE END OF RUNWAY 6R AT THE LOS ANGELES INTERNATIONAL AIRPORT AND CAUGHT FIRE FOLLOWING A REJECTED TAKEOFF. FLAMES, RADIANT HEAT, AND A GIRT FABRIC OVERLOAD FAILURE EVENTUALLY RESULTED IN TOTAL FAILURE OF ALL THE PASSENGER EVACUATION SYSTEMS. THUS, TO ESCAPE FROM THE BURNING AIRCRAFT, ABOUT 40 OF THE 200 OCCUPANTS WERE FORCED TO JUMP TO THE GROUND WHILE ANOTHER 15 PERSONS USED THE ESCAPE ROPE AT THE FIRST OFFICER'S SLIDING WINDOW. TWO PASSENGERS DIED AND 31 PERSONS WERE SERIOUSLY INJURED DURING THE EVACUATION.

RECOMMENDATION SUBJECT:

AMEND 14 CFR 25.809 TO REQUIRE A SECONDARY MEANS OF ESCAPE AT ALL FLOOR-LEVEL CABIN EXITS CURRENTLY REQUIRING EMERGENCY ESCAPE SLIDES. THESE SECONDARY ESCAPE MEANS COULD BE ROPES OR OTHER MEANS DEMONSTRATED TO BE SUITABLE FOR EVACUATION PURPOSES.

RESPONSE:

FAA LTR: WHILE ESCAPE AIDS, SUCH AS ROPES AND INERTIA REEL DEVICES, ARE CURRENTLY APPROVED FOR USE BY TRAINED FLIGHT CREWMEMBERS, WE DO NOT BELIEVE THAT THESE DEVICES ARE SUITABLE FOR USE BY EVACUATING PASSENGERS. THE USE OF THESE DEVICES, IN LIEU OF INFLATABLE OR HAND-HELD SLIDES, COULD RESULT IN A SIGNIFICANT REDUCTION IN EVACUATION RATE AND COULD BE EXTREMELY HAZARDOUS TO PERSONS NOT TRAINED TO USE A ROPE OR SIMILAR DEVICE. FURTHERMORE, IT WOULD BE DIFFICULT, IF NOT IMPOSSIBLE, FOR CERTAIN PERSONS SUCH AS ELDERLY PERSONS, CHILDREN, OR HANDICAPPED INDIVIDUALS TO SAFELY USE THESE DEVICES. AT THIS TIME, WE DO NOT HAVE EVIDENCE TO SUPPORT RULEMAKING AS RECOMMENDED; HOWEVER, IF IN THE FUTURE SUCH INFORMATION BECOMES AVAILABLE WE WOULD CONSIDER REGULATORY ACTION.

NTSB RECOMMENDATIONS TO FAA
OPEN UNACCEPTABLE AVIATION SAFETY RECOMMENDATIONS
FOR 1979

LOG NUMBER: 0911
RECOMMENDATION NUMBER: A-79-036
FILE TYPE: RECOMMENDATION
DATE OF ISSUE: 79 JUN 01
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NTSB PRIORITY: CLASS II
RESPONSE-DUE DATE: 79 AUG 30
NTSB STATUS: OPEN - UNACCEPTABLE ACTION
NTSB FOLLOW-UP DATE:
CLOSEOUT OR MONITOR DATE:

ABSTRACT

ON MAY 8, 1978, A NATIONAL AIRLINES BOEING 727 CRASHED DURING AN APPROACH TO THE PENSACOLA REGIONAL AIRPORT AT PENSACOLA, FLORIDA. THE AIRCRAFT CAME TO REST IN 12 FEET OF WATER IN THE ESCAMBIA BAY ABOUT 3 MILES OFF SHORE. THE 52 PASSENGERS AND 6 CREWMEMBERS SUCCESSFULLY EVACUATED FROM THE AIRCRAFT, AND 3 PASSENGERS DROWNED. TWO FLIGHT ATTENDANTS AND TWO PASSENGERS WERE INJURED SERIOUSLY, AND SEVEN PASSENGERS WERE INJURED SLIGHTLY.

RECOMMENDATION SUBJECT:

AMEND 14 CFR 121.340 TO REQUIRE THAT ALL PASSENGER-CARRYING AIR CARRIER AIRCRAFT BE EQUIPPED WITH APPROVED FLOTATION-TYPE SEAT CUSHIONS.

RESPONSE:

FAA LTR: ACTIONS UNDERWAY WITH RESPECT TO RECOMMENDATION A-79-35 WILL ENSURE THAT CREWMEMBERS HAVE KNOWLEDGE OF EQUIPMENT ON BOARD. THIS, IN ADDITION TO THE PASSENGER BRIEFING REQUIRED BY SECTION 121.571, SHOULD PROVIDE AN ADEQUATE LEVEL OF SAFETY IN THIS AREA.

NTSB RECOMMENDATIONS TO FAA
OPEN UNACCEPTABLE AVIATION SAFETY RECOMMENDATIONS
FOR 1979

LOG NUMBER: 1079
RECOMMENDATION NUMBER: A-79-46
FILE TYPE: RECOMMENDATION
DATE OF ISSUE: 79 JUN 05
MODE: AVIATION
NTSB PRIORITY: CLASS II
RESPONSE-DUE DATE: 79 SEP 03
NTSB STATUS: OPEN - UNACCEPTABLE ACTION.
NTSB FOLLOW-UP DATE: 79 OCT 24
CLOSEOUT OR MONITOR DATE:

ABSTRACT

THE NATIONAL TRANSPORTATION SAFETY BOARD HAS STUDIED STATISTICALLY ITS DATA FILES OF 17,312 ACCIDENTS THAT OCCURRED FROM 1972 TO 1976 AND INVOLVED LIGHT, SINGLE-ENGINE, FIXED-WING AIRCRAFT (SINGLE-ENGINE AIRCRAFT). SINGLE-ENGINE AIRCRAFT ACCOUNTED FOR APPROXIMATELY 73 PERCENT OF ALL GENERAL AVIATION FLYING HOURS FROM 1972 TO 1976, ABOUT 91 PERCENT OF THE ACCIDENTS, 76 PERCENT OF THE FATAL ACCIDENTS AND THE MOST SIGNIFICANT SEGMENT OF GENERAL AVIATION IN TERMS OF ACTIVITY AND LOSS.

RECOMMENDATION SUBJECT:

GENERATE, THROUGH A STRATIFIED SAMPLING OF GENERAL AVIATION PILOTS, THE DATE, DURATION, AIRCRAFT MAKE AND MODEL, THE GEOGRAPHICAL LOCATION OF THE FLIGHT, AND THE FLIGHT TIME IN IFR, HIGH DENSITY ALTITUDE, AND WIND CONDITIONS; ALL ON A PER FLIGHT BASIS. THE DATA COLLECTED SHOULD INCLUDE THE PILOT'S TOTAL TIME, TIME IN EACH TYPE AIRCRAFT FLOWN, AGE, OCCUPATION, CERTIFICATE, AND MEDICAL WAIVERS.

RESPONSE:

FAA LTR: THE EXPOSURE DATA, SAID TO BE USEFUL TO THE ASSESSMENT OF PILOT ROLE IN AIRCRAFT ACCIDENTS, IS INFORMATION WHICH IS ALREADY AVAILABLE TO YOU IN RESPECT TO ACCIDENTS WHICH HAVE OCCURED AND WHICH HAVE BEEN PROPERLY INVESTIGATED. WE ARE CONVINCED THAT DATA OBTAINED FROM A SAMPLING OF ACCIDENT REPORTS WILL PRODUCE SUBSTANTIALLY THE SAME EXPOSURE DATA AS THAT WHICH MIGHT BE DERIVED FROM A SAMPLING OF PILOTS WHO HAVE NOT BEEN INVOLVED IN ACCIDENTS. THE CURRENT APPROACH USED BY THE FAA TO OBTAIN EXPOSURE INFORMATION IS BASED ON A RANDOM SAMPLE TECHNIQUE.

NTSB RECOMMENDATIONS TO FAA
OPEN UNACCEPTABLE AVIATION SAFETY RECOMMENDATIONS
FOR 1979

LOG NUMBER:	1181
RECOMMENDATION NUMBER:	A-79-050
FILE TYPE:	RECOMMENDATION
DATE OF ISSUE:	79 JUL 17
MODE:	AVIATION
NTSB PRIORITY:	CLASS II
RESPONSE DUE DATE:	79 OCT 15
NTSB STATUS:	OPEN - UNACCEPTABLE ACTION
NTSB FOLLOW-UP DATE:	79 NOV 27
CLOSEOUT OR MONITOR DATE:	

ABSTRACT

ROCKY MOUNTAIN AIRWAYS, INC., FLIGHT 217, A DEHAVILLAND DHC-6, CRASHED ON A MOUNTAIN ABOUT 6 NMI EAST-NORTHEAST OF STEAMBOAT SPRINGS, COLORADO, ON DECEMBER 4, 1978.

RECOMMENDATION SUBJECT:

THE NTSB RECOMMENDS THAT THE FEDERAL AVIATION ADMINISTRATION: ISSUE A OPERATIONS BULLETIN DIRECTING ALL OPERATIONS INSPECTORS WHO ARE RESPONSIBLE FOR THE SURVEILLANCE OF 14 CFR 135 OPERATORS TO ASSURE THAT 14 CFR 135.159 (NEW 14 CFR 135.165) IS COMPLIED WITH UNIFORMLY IN ACCORDANCE WITH THE OFFICIAL LEGAL INTERPRETATION OF THIS REGULATION BY THE FAA.

RESPONSE:

FAA LTR: INSPECTORS ASSIGNED TO ROCKY MOUNTAIN AIRWAYS, INC., AND ALASKA AERONAUTICAL INDUSTRIES, INC., WERE AWARE OF THE FAA LEGAL INTERPRETATION AND HAD DISCUSSED THE NAVIGATION EQUIPMENT REQUIREMENTS WITH THOSE OPERATORS. THE OPERATORS EITHER HAD PROPERLY EQUIPPED AIRCRAFT OR PROVISIONS IN THEIR OPERATIONS MANUALS FOR CANCELLATION OF FLIGHTS IF THE NAVIGATION FACILITY WHICH PROVIDED SIGNALS TO ONE OF THE TWO NAVIGATION RECEIVERS BECAME INOPERATIVE. WE BELIEVE THAT THE FAA HAS ADEQUATELY EMPHASIZED THE NAVIGATION EQUIPMENT REQUIREMENTS IN THE PAST. BECAUSE OF THE IMPORTANCE OF THE SUBJECT, WE RECENTLY FORWARDED THE FAA INTERPRETATION OF 14 CFR 135.159(A)(5) TO ALL REGIONAL FLIGHT STANDARDS DIVISIONS FOR REDISTRIBUTION TO FAA FIELD OFFICES. ORDER 8430.1A, "OPERATIONS INSPECTION AND SURVEILLANCE PROCEDURES - AIR TAXI OPERATORS AND COMMERCIAL OPERATORS OF SMALL AIRCRAFT," IS BEING REWRITTEN TO PROVIDE GUIDANCE ON THE REVISED 14 CFR 135. A DISCUSSION OF THE NAVIGATION EQUIPMENT REQUIREMENTS WILL BE INCLUDED IN THIS HANDBOOK.

NTSB RECOMMENDATIONS TO FAA
OPEN UNACCEPTABLE AVIATION SAFETY RECOMMENDATIONS
FOR 1979

LOG NUMBER:	1092
RECOMMENDATION NUMBER:	A-79-070
FILE TYPE:	RECOMMENDATION
DATE OF ISSUE:	79 SEP 06
MODE:	AVIATION
NTSB PRIORITY:	CLASS II
RESPONSE-DUE DATE:	79 DEC 05
NTSB STATUS:	OPEN - UNACCEPTABLE ACTION
NTSB FOLLOW-UP DATE:	80 JAN 04
CLOSEOUT OR MONITOR DATE:	80 MAR 01

ABSTRACT

THE NTSB'S INVESTIGATION OF THE ROCKY MOUNTAIN AIRLINES DEHAVILLAND DHC AIRCRAFT ACCIDENT NEAR STEAMBOAT SPRINGS, COLORADO, ON DECEMBER 4, 1978, ILLUSTRATED THE IMMEDIATE NEED FOR SURVIVAL TRAINING FOR CREWMEMBERS AND FOR THE INSTALLATION OF SHOULDER HARNESSES ON CREW SEATS.

RECOMMENDATION SUBJECT:

THE NTSB RECOMMENDS THAT THE FEDERAL AVIATION ADMINISTRATION: STRICTLY ENFORCE THE COMPLIANCE DATE FOR THE INSTALLATION OF SHOULDER HARNESSES AS REQUIRED BY 14 CFR 135.171.

RESPONSE:

FAA LTR: THIS AGENCY'S ACTION OF GRANTING CERTAIN OPERATORS EXTENSIONS TO THE SHOULDER HARNESS REQUIREMENT UNDER PART 135 IS A LOGICAL SOLUTION TO A SUPPLY PROBLEM. WE ARE NOT AWARE OF ANY ABUSES BY OPERATORS IN DELAYING THE INSTALLATION OF SHOULDER HARNESSES IN THEIR AIRCRAFT.

NTSB RECOMMENDATIONS TO FAA
OPEN UNACCEPTABLE AVIATION SAFETY RECOMMENDATIONS
FOR 1979

LOG NUMBER:	1112
RECOMMENDATION NUMBER:	A-79-085
FILE TYPE:	RECOMMENDATION
DATE OF ISSUE:	79 NOV 19
MODE:	AVIATION
NTSB PRIORITY:	CLASS I
RESPONSE-DUE DATE:	80 FEB 11
NTSB STATUS:	OPEN - UNACCEPTABLE ACTION
NTSB FOLLOW-UP DATE:	80 MAR 21
CLOSEOUT OR MONITOR DATE:	

ABSTRACT

NEW YORK AIRWAYS, INC., FLIGHT 972, A SIKORSKY S61L HELICOPTER WITH 15 PASSENGERS AND A CREW OF 3 CRASHED ON NEWARK INTERNATIONAL AIRPORT AT 1025 ON APRIL 18, 1979, SHORTLY AFTER TAKEOFF. THREE PASSENGERS WERE KILLED, 9 OTHERS AND THE CREWMEMBERS WERE INJURED.

RECOMMENDATION SUBJECT:	RESPONSE:
THE NTSB RECOMMENDS THAT THE FEDERAL AVIATION ADMINISTRATION: ISSUE AN AIRWORTHINESS DIRECTIVE TO REQUIRE A ONE-TIME ULTRASONIC INSPECTION OF TAIL ROTOR BLADES INSTALLED ON S-58 AND S-58T MODEL HELICOPTERS FOR EVIDENCE OF SPAR CRACKS AND, IF NECESSARY, ESTABLISH A RECURRING SPAR INSPECTION BASED ON AN APPROPRIATE NUMBER OF OPERATING HOURS.	FAA LTR: FAA DOES NOT CONCUR. ALTHOUGH BOTH TAIL ROTOR BLADES ARE SIMILAR IN DESIGN, THE S-58 TAIL ROTOR BLADE IS LESS SUBJECT TO LOADS AND STRESSES THAN THE S-61 TAIL ROTOR BLADE. SDR'S DO NOT INDICATE AN UNSAFE CONDITION: ONLY ONE POSSIBLE INDICATION OF FATIGUE FAILURE IN 20 YEARS OF SERVICE. SIKORSKY HAS ISSUED SERVICE BULLETINS FOR VISUAL, AND IF CONSIDERED NECESSARY, DYE PENETRANT INSPECTIONS OF THE TAIL ROTOR BLADE.

NTSB RECOMMENDATIONS TO FAA
OPEN UNACCEPTABLE AVIATION SAFETY RECOMMENDATIONS
FOR 1979

LOG NUMBER: 1087
RECOMMENDATION NUMBER: A-79-089
FILE TYPE: RECOMMENDATION
DATE OF ISSUE: 79 DEC 04
MODE: AVIATION
NTSB PRIORITY: CLASS II
RESPONSE-DUE DATE: 80 MAR 05
NTSB STATUS: OPEN - UNACCEPTABLE ACTION
NTSB FOLLOW-UP DATE: 80 JUL 16
CLOSEOUT OR MONITOR DATE:

ABSTRACT

THE NTSB HAS BEEN INVESTIGATING ENGINE MALFUCTIONS AND FAILURES RELATED TO FUEL LINE VAPOR PROBLEMS IN CESSNA 200-SERIES AIRCRAFT. DURING THE SAFETY BOARD'S INVESTIGATION OF A FATAL CESSNA T-206 ACCIDENT IN JULY 1978 IN WHICH AN UNEXPLAINED ENGINE FAILURE HAD OCCURRED, WE AGAIN BECAME CONCERNED ABOUT CESSNA 200-SERIES AIRCRAFT FUEL SYSTEM PROBLEMS. CESSNA AIRCRAFT COMPANY RECENTLY ISSUED SERVICE LETTERS CONTAINING CHECKLISTS AND PROCEDURES ON THIS SUBJECT TO OPERATORS OF CESSNA 200-SERIES AIRCRAFT. ADDITIONALLY, THE FAA ISSUED AN AIRWORTHINESS DIRECTIVE 79-15-01, EFFECTIVE JULY 26, 1979, MAKING THE PROVISIONS OF A PORTION OF CESSNA'S SERVICE LETTERS MANDATORY. NEVERTHELESS, NO ACTION HAS BEEN TAKEN BY CESSNA OR THE FAA CENTRAL REGION TO INSTITUTE HARDWARE CHANGES TO CORRECT THIS PROBLEM. THE SAFETY BOARD IS CONCERNED ABOUT THE LACK OF TIMELY AND ADEQUATE CORRECTIVE ACTION TO ELIMINATE FUEL SYSTEM PROBLEMS THAT HAVE BEEN IDENTIFIED AND BELIEVES THAT THE FAA SHOULD TAKE IMMEDIATE ACTION TO ELIMINATE THE POTENTIALLY UNSAFE CONDITION ON THESE AIRCRAFT.

RECOMMENDATION SUBJECT:

THE NTSB RECOMMENDS THAT THE FEDERAL AVIATION ADMINISTRATION: REQUIRE THE REDESIGN OF THE CESSNA 200-SERIES AIRCRAFT FUEL SYSTEM TO INCORPORATE A SEPARATE MEANS TO ROUTE FUEL VAPOR FROM THE PUMP OR RESERVOIR TO THE FUEL TANKS, AND REQUIRE THE RETROFIT OF THE NEW SYSTEM ON EXISTING CESSNA 200-SERIES AIRCRAFT.

RESPONSE:

FAA LTR: SERVICE RECORDS DO INDICATE VAPOR RETURN PROBLEM IN CESSNA 200 SERIES AIRCRAFT - BUT ONLY WITH MODELS 1976 THROUGH 1979, NOT WITH EARLIER MODELS. BASED ON A DESIGN REVIEW AND FLIGHT TESTS, MANUFACTURER ISSUED CESSNA SERVICE LETTER SE-79-60 DATED DECEMBER 3, 1979, AND MADE AVAILABLE CESSNA SERVICE KIT SK-210-93. ON FEBRUARY 8, 1980, FAA ISSUED AD 80-04-09 CESSNA: AMENDMENT 39-3697, MAKING SE-79-60 MANDATORY. MODIFICATIONS HAVE ALREADY BEEN INCORPORATED IN 1980 CESSNA T210N AND P210N. AD REQUIRES MODIFICATION OF THE 1976 THROUGH 1979 CESSNA T210M, T210N, AND P210N AIRPLANES WITHIN THE NEXT 100 HOURS TIME-IN-SERVICE AFTER EFFECTIVE DATE OF FEBRUARY 16, 1980.

LOG NUMBER: 1087
RECOMMENDATION NUMBER: A-79-090
FILE TYPE: RECOMMENDATION
DATE OF ISSUE: 79 DEC 04
MODE: AVIATION
NTSB PRIORITY: CLASS II
RESPONSE-DUE DATE: 80 MAR 05
NTSB STATUS: OPEN - UNACCEPTABLE ACTION
NTSB FOLLOW-UP DATE: 80 JUL 16
CLOSEOUT OR MONITOR DATE:

ABSTRACT

THE NTSB HAS BEEN INVESTIGATING ENGINE MALFUCTIONS AND FAILURES RELATED TO FUEL LINE VAPOR PROBLEMS IN CESSNA 200-SERIES AIRCRAFT. DURING THE SAFETY BOARD'S INVESTIGATION OF A FATAL CESSNA T-206 ACCIDENT IN JULY 1978 IN WHICH AN UNEXPLAINED ENGINE FAILURE HAD OCCURRED, WE AGAIN BECAME CONCERNED ABOUT CESSNA 200-SERIES AIRCRAFT FUEL SYSTEM PROBLEMS. CESSNA AIRCRAFT COMPANY RECENTLY ISSUED SERVICE LETTERS CONTAINING CHECKLISTS AND PROCEDURES ON THIS SUBJECT TO OPERATORS OF CESSNA 200-SERIES AIRCRAFT. ADDITIONALLY, THE FAA ISSUED AN AIRWORTHINESS DIRECTIVE 79-15-01, EFFECTIVE JULY 26, 1979, MAKING THE PROVISIONS OF A PORTION OF CESSNA'S SERVICE LETTERS MANDATORY. NEVERTHELESS, NO ACTION HAS BEEN TAKEN BY CESSNA OR THE FAA CENTRAL REGION TO INSTITUTE HARDWARE CHANGES TO CORRECT THIS PROBLEM. THE SAFETY BOARD IS CONCERNED ABOUT THE LACK OF TIMELY AND ADEQUATE CORRECTIVE ACTION TO ELIMINATE FUEL SYSTEM PROBLEMS THAT HAVE BEEN IDENTIFIED AND BELIEVES THAT THE FAA SHOULD TAKE IMMEDIATE ACTION TO ELIMINATE THE POTENTIALLY UNSAFE CONDITION ON THESE AIRCRAFT.

RECOMMENDATION SUBJECT:

THE NTSB RECOMMENDS THAT THE FEDERAL AVIATION ADMINISTRATION: AS AN INTERIM MEASURE, ISSUE AN AIRWORTHINESS DIRECTIVE TO REQUIRE THE INSPECTION OF: (1) THE FORWARD FUEL SUPPLY LINE FOR PROPER BEND RADIUS AND TUBE DIAMETER IN THE BEND; AND (2) THE FUEL LINES INSIDE THE ENGINE COMPARTMENT FOR PROPER SEPARATION FROM EXHAUST SYSTEM COMPONENTS OR OTHER HEAT SOURCES OF ALL CESSNA 200-SERIES AIRPLANES, AND THE CORRECTION OF ALL DEFICIENCIES FOUND IN THOSE INSTALLATIONS.

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RESPONSE:

FAA LTR: TEST RESULTS AND SERVICE REPORTS OF WHICH WE ARE AWARE ARE INCONCLUSIVE IN ESTABLISHING THAT MINOR SYSTEM RESTRICTIONS AND TUBE DIAMETER OR BEND RADII DISCREPANCIES OF THE MAGNITUDE BELIEVED TO EXIST IN AIRPLANES IN SERVICE ARE SIGNIFICANT FACTORS IN THE VAPOR RETURN PROBLEM. OUR CONCLUSION PARALLELS THE BOARD'S STATEMENT IN ITS TRANSMITTAL LETTER THAT THE FINDINGS FROM A TEST, ACCOMPLISHED WITH A FULL-SCALE FUEL SYSTEM MOCKUP CONSTRUCTED BY CESSNA, DETERMINED THAT AN UNDERSIZE FITTING WAS NOT THE REASON FOR THE FUEL PROBLEMS ADDRESSED IN CESSNA SERVICE LETTER SE77-38, DATED OCTOBER 4, 1977. WE CONCLUDE THAT AT THIS TIME INSUFFICIENT DATA OR FACTS EXIST TO CREDIBLY SUPPORT A FINDING PER FEDERAL AVIATION REGULATION (FAR) 21.99 THAT THE BEND RADII AND TUBE DIAMETER IN THE BEND ARE UNSAFE CONDITIONS ON IN-SERVICE AIRPLANES.

NTSB RECOMMENDATIONS TO FAA
OPEN UNACCEPTABLE AVIATION SAFETY RECOMMENDATIONS
FOR 1979

LOG NUMBER:	1117
RECOMMENDATION NUMBER:	A-79-098
FILE TYPE:	RECOMMENDATION
DATE OF ISSUE:	79 DEC 21
MODE:	AVIATION
NTSB PRIORITY:	CLASS II
RESPONSE-DUE DATE:	80 MAR 22
NTSB STATUS:	OPEN - UNACCEPTABLE ACTION
NTSB FOLLOW-UP DATE:	80 JUN 13
CLOSEOUT OR MONITOR DATE:	

ABSTRACT

THE NATIONAL TRANSPORTATION SAFETY BOARD HAS COMPLETED ITS DETERMINATION OF PROBABLE CAUSE AND FINAL REPORT ON THE AMERICAN AIRLINES DC-10 ACCIDENT IN CHICAGO ON MAY 25, 1979. THE SAFETY BOARD'S ANALYSIS OF THE EVIDENCE, AND RECOMMENDATIONS SUBMITTED TO THE BOARD BY THE OTHER PARTIES WHO PARTICIPATED IN THE INVESTIGATION AND PUBLIC HEARING, HAVE IDENTIFIED SEVERAL AREAS WHICH WE BELIEVE REQUIRE THE FEDERAL AVIATION ADMINISTRATION'S EARLY ATTENTION.

RECOMMENDATION SUBJECT:

THE NTSB RECOMMENDS THAT THE FEDERAL AVIATION ADMINISTRATION: INCORPORATE IN TYPE CERTIFICATION PROCEDURES FULL CONSIDERATION OF: (A) FACTORS WHICH AFFECT MAINTAINABILITY, SUCH AS ACCESSIBILITY FOR INSPECTION, POSITIVE OR REDUNDANT RETENTION OF CONNECTING HARDWARE AND THE CLEARANCES OF INTERCONNECTING PARTS IN THE DESIGN OF CRITICAL STRUCTURAL ELEMENTS; AND (B) POSSIBLE FAILURE COMBINATIONS WHICH CAN RESULT FROM PRIMARY STRUCTURAL DAMAGE IN AREAS THROUGH WHICH ESSENTIAL SYSTEMS ARE ROUTED.

RESPONSE:

FAA LTR: OUR CURRENT TYPE CERTIFICATION PROCEDURES INCLUDE MAINTENANCE PARTICIPATION IN ASSESSING ALL AREAS OF THE DESIGN WHICH ARE AFFECTED BY MAINTENANCE. WE INTEND TO FURTHER AMEND THESE PROCEDURES TO ASSURE AND EMPHASIZE THAT MAINTENANCE SPECIALISTS, INCLUDING OUR NATIONAL RESOURCE SPECIALISTS, WILL PARTICIPATE IN APPROVAL OF ALL FEATURES OF A DESIGN WHICH INVOLVE MAINTENANCE CONCERNS.

COMMENT ON A-79-98(A): WITH REGARD TO MAINTAINABILITY, FAR 25.611 COVERS THE FACTOR OF ACCESSIBILITY; FAR 25.607(A) AND (B) COVER THE FACTOR OF RETENTION OF CONNECTING HARDWARE; AND FAR 25.601 AND 25.571 COVER CLEARANCES OF INTERCONNECTING PARTS IN THE DESIGN OF CRITICAL STRUCTURAL ELEMENTS.

COMMENT ON A-79-98(B): DESIGN ASPECTS OF FAILURE COMBINATIONS WHICH CAN RESULT FROM PRIMARY STRUCTURAL DAMAGE IN AREAS THROUGH WHICH ESSENTIAL SYSTEMS ARE ROUTED ARE COVERED BY FAR 25.571, 25.601, 25.671, AND 25.1309.

NTSB RECOMMENDATIONS TO FAA
OPEN UNACCEPTABLE AVIATION SAFETY RECOMMENDATIONS
FOR 1979

LOG NUMBER:	1117
RECOMMENDATION NUMBER:	A-79-099
FILE TYPE:	RECOMMENDATION
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ABSTRACT

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RECOMMENDATION SUBJECT:

THE NTSB RECOMMENDS THAT THE FEDERAL AVIATION ADMINISTRATION: INSURE THAT THE DESIGN OF TRANSPORT CATEGORY AIRCRAFT PROVIDES POSITIVE PROTECTION AGAINST ASYMMETRY OF LIFT DEVICES DURING CRITICAL PHASES OF FLIGHT; OR, IF CERTIFICATION IS BASED UPON DEMONSTRATED CONTROLLABILITY OF THE AIRCRAFT UNDER CONDITION OF ASYMMETRY, INSURE THAT ASYMMETRIC WARNING SYSTEMS, STALL WARNING SYSTEMS, OR OTHER CRITICAL SYSTEMS NEEDED TO PROVIDE THE PILOT WITH INFORMATION ESSENTIAL TO SAFE FLIGHT ARE COMPLETELY REDUNDANT.

RESPONSE:

FAA LTR: CURRENT REGULATIONS CONTAIN A FIRM BASIS TO ASSURE POSITIVE PROTECTION AGAINST ASYMMETRY OF LIFT DEVICES DURING CRITICAL PHASES OF FLIGHT OR THE DEMONSTRATION OF ADEQUATE WARNING AND CONTROLLABILITY OF THE AIRCRAFT DURING CONDITIONS OF ASYMMETRY. FAR 25.671, AS AMENDED BY AMENDMENT 25-23 ON APRIL 8, 1970, REQUIRES DEMONSTRATION OF CONTINUED SAFE FLIGHT AND LANDING AFTER ANY COMBINATION OF FAILURES NOT SHOWN TO BE EXTREMELY IMPROBABLE. FAR 25.1309 PRESENTLY REQUIRES THAT ALL INFORMATION ESSENTIAL TO CONTINUED SAFE FLIGHT AND LANDING BE PROVIDED TO THE PILOT IN ALL CASES OF FAILURES NOT SHOWN TO BE EXTREMELY IMPROBABLE.

NTSB RECOMMENDATIONS TO FAA
OPEN UNACCEPTABLE AVIATION SAFETY RECOMMENDATIONS
FOR 1979

LOG NUMBER: 1117
RECOMMENDATION NUMBER: A-79-101
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RESPONSE-DUE DATE: 80 MAR 22
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ABSTRACT

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RECOMMENDATION SUBJECT:

THE NTSB RECOMMENDS THAT THE FEDERAL AVIATION ADMINISTRATION: ASSURE THAT THE MAINTENANCE REVIEW BOARD FULLY CONSIDERS THE FOLLOWING ELEMENTS WHEN IT APPROVES AN AIRLINE/MANUFACTURER MAINTENANCE PROGRAM: (A) HAZARD ANALYSIS OF MAINTENANCE PROCEDURES WHICH INVOLVE REMOVAL, INSTALLATION, OR WORK IN THE VICINITY OF STRUCTURALLY SIGNIFICANT COMPONENTS IN ORDER TO IDENTIFY AND ELIMINATE THE RISK OF DAMAGE TO THOSE COMPONENTS; (B) SPECIAL INSPECTIONS OF STRUCTURALLY SIGNIFICANT COMPONENTS FOLLOWING MAINTENANCE AFFECTING THESE COMPONENTS; AND (C) THE APPROPRIATENESS OF PERMITTING "ON CONDITION" MAINTENANCE AND, IN PARTICULAR, THE VALIDITY OF SAMPLING INSPECTION AS IT RELATES TO THE DETECTION OF DAMAGE WHICH COULD RESULT FROM UNDETECTED FLAWS OR DAMAGE TO STRUCTURALLY SIGNIFICANT ELEMENTS DURING MANUFACTURE OR MAINTENANCE.

RESPONSE:

FAA LTR: COMMENT ON A-79-101(A) AND (B): BOTH OF THESE RECOMMENDATIONS SUGGEST THAT THE MAINTENANCE REVIEW BOARD (MRB) FUNCTION BE EXPANDED TO INCLUDE HAZARD ANALYSIS OF MAINTENANCE FUNCTIONS AND SPECIAL INSPECTIONS FOLLOWING MAINTENANCE OF STRUCTURAL COMPONENTS. THUS, THE RECOMMENDATION INCORPORATES THE ASSUMPTION THAT THE MRB IS THE APPROPRIATE PLACE FOR SUCH FUNCTIONS. BOTH RECOMMENDATIONS ALSO INCORPORATE THE ASSUMPTION THAT BECAUSE THE FAA APPROVES THE OVERALL MAINTENANCE PROGRAM, IT ALSO APPROVES EACH AND EVERY MAINTENANCE PROCEDURE. SINCE THE MRB FUNCTION IS NOT TO PROVIDE THE BASIS FOR APPROVAL OF AN AIRLINE'S TOTAL MAINTENANCE PROGRAM, THERE IS NO REASON TO INCLUDE MAINTENANCE HAZARD EVALUATIONS OR SPECIAL INSPECTIONS FOLLOWING MAINTENANCE TO CRITICAL COMPONENTS. MAINTENANCE PROGRAMS FOR EACH AIRLINE ARE REVIEWED AND APPROVED BY FAA MAINTENANCE INSPECTORS ASSIGNED TO EACH CARRIER. THEY CONTINUALLY MONITOR THE PROGRAMS AND TAKE CORRECTIVE ACTION WHEN HAZARDOUS MAINTENANCE PRACTICES ARE DISCOVERED.
COMMENT ON A-79-101(C): WE AGREE THAT EMPHASIS SHOULD BE PLACED ON ASSURING THAT NO DEFECTS ARE PERMITTED DURING MANUFACTURE AND THAT DAMAGE IS NOT INFLICTED DURING MAINTENANCE. "ON CONDITION" AND "SAMPLING" INSPECTION FREQUENCY AND PROCEDURES ARE TIME PROVEN TECHNIQUES FOR A PROPERLY ASSEMBLED PRODUCT OR ITEM. WE CANNOT ENVISION HOW AN MRB COULD HAVE THE INSIGHT TO FORECAST WHICH STRUCTURALLY SIGNIFICANT COMPONENTS WOULD SUFFER A MANUFACTURING DEFECT OR DAMAGE DUE TO A MAINTENANCE PRACTICE. HOWEVER, THE APPROPRIATENESS OF THE TYPE OF INSPECTION TECHNIQUES FOR STRUCTURALLY SIGNIFICANT COMPONENTS WILL BE INCLUDED IN THE AGENDA FOR THE MAINTENANCE STEERING GROUP (MSG-3), WHICH HAS BEEN CONVENED FOR THE PURPOSE OF UPDATING THE MAINTENANCE ANALYSIS LOGIC PROCESS.

NTSB RECOMMENDATIONS TO FAA
OPEN UNACCEPTABLE AVIATION SAFETY RECOMMENDATIONS
FOR 1979

LOG NUMBER: 1117
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NTSB PRIORITY: CLASS II
RESPONSE-DUE DATE: 80 MAR 22
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ABSTRACT

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RECOMMENDATION SUBJECT:

THE NTSB RECOMMENDS THAT THE FEDERAL AVIATION ADMINISTRATION: REQUIRE THAT AIR CARRIER MAINTENANCE FACILITIES AND OTHER DESIGNATED REPAIR STATIONS: (A) MAKE A HAZARD ANALYSIS EVALUATION OF PROPOSED MAINTENANCE PROCEDURES WHICH DEVIATE FROM THOSE IN THE MANUFACTURER'S MAINTENANCE MANUAL AND WHICH INVOLVE REMOVAL, INSTALLATION, OR WORK IN THE VICINITY OF STRUCTURALLY SIGNIFICANT COMPONENTS: AND (B) SUBMIT PROPOSED PROCEDURES AND ANALYSIS TO THE APPROPRIATE REPRESENTATIVE OF THE ADMINISTRATOR, FAA, FOR APPROVAL.

RESPONSE:

FAA LTR: COMMENT ON A-79-102(A): SUCH A REQUIREMENT IS ALREADY IMPOSED BY THE STATUTORY PROVISION OF THE FEDERAL AVIATION ACT OF 1958. SPECIFICALLY, SECTION 605(A), AND FAR 121.363 AND 135.413 PLACE RESPONSIBILITY DIRECTLY UPON THE CARRIERS FOR MAINTAINING THEIR AIRCRAFT IN AN AIRWORTHY CONDITION. ADDITIONALLY, FAR 121.373 AND 135.431 REQUIRE CARRIERS TO PERFORM CONTINUING ANALYSIS OF THEIR MAINTENANCE PROGRAMS FOR ADEQUACY. IN PROPER EXERCISE OF THAT RESPONSIBILITY, IT IS INCUMBENT UPON AIR CARRIERS AND REPAIR STATIONS DOING WORK FOR A CARRIER TO ANALYZE THEIR MAINTENANCE PRACTICES FOR POSSIBLE HAZARD TO STRUCTURE.

COMMENT ON A-79-102(B): PRESENT REGULATION FAR 121.369(B) (1) REQUIRES THAT THE CARRIER SET FORTH ITS MAINTENANCE PROCEDURES IN A MANUAL. FAR 121.137 REQUIRES THAT THE MANUAL AND CHANGES BE PROVIDED TO THE FAA. THIS PROCESS DOES NOT SIGNIFY FAA APPROVAL OF EACH AND EVERY MAINTENANCE PRACTICE, OR PROCEDURE, BUT IS ONE WHICH IS DESIGNED TO ENSURE THAT A CARRIER HAS CLEARLY SET FORTH ITS MAINTENANCE PROCEDURES. IT IS THE DUTY OF THE CARRIER TO ENSURE THAT THESE PROCEDURES, AS PART OF SEVERAL ASPECTS OF ITS MAINTENANCE PROGRAM, ARE APPROPRIATE TO MAINTAINING THE HIGHEST POSSIBLE DEGREE OF SAFETY.

Mr. **Anderson**. Some people believe there is a conflict between the FAA's safety responsibilities and its responsibility to promote civil aviation. Has the Board encountered instances in which you believe that the FAA has incorrectly refused to make safety improvements because of the cost of that improvement to the industry?

Mr. **Bursley**. Mr. Chairman, in the time I have been with the Board, I cannot recall a particular case of this kind. I have the understanding that a number of years ago the safety board recommended shoulder type harnesses be installed in a number of general aviation type aircraft and that a rulemaking was initiated along that line. The final rule limited itself to the shoulder harnesses in the pilot and copilot position and did not require them throughout the aircraft. It is my understanding that the reason the rule did not go further was that the cost of the additional shoulder harnesses was viewed by the FAA as being uneconomic.

Mr. **Anderson**. Do you believe that the Administrator's nonsafety responsibilities prevent him from giving adequate time and attention to safety?

Mr. **Bursley**. I honestly do not, Mr. Chairman. I think, as Administrator Bond described earlier, the purely nonsafety duties are quite ministerial. Our view of some areas that have been identified as promotional is that they have substantial safety implications. So, we would not view them as purely promotional functions.

Mr. **Anderson**. Mr. Fary?

Mr. **Fary**. No questions, Mr. Chairman.

Mr. **Anderson**. Ms. Ferraro?

Ms. **Ferraro**. The National Transportation Safety Board comes in after an accident. Is that correct?

Mr. **Bursley**. Our primary function is accident investigation, yes.

Ms. **Ferraro**. Do you ever go in where you are told a dangerous situation exists and investigate prior to an accident?

Mr. **Bursley**. We have conducted investigations of what is called an incident, where there perhaps is a near-miss of some sort or a report of a condition that is suspect. In the time I have been with the Board, which covers about a year, there was concern last spring about the air traffic control situation in San Diego, even after the PSA accident. We did investigate a number of incidents at that time and made recommendations to the FAA with regard to expediting the TCA proposal that had emerged from the San Diego hearings and with respect to some variation on the TCA system that we thought might be appropriate for that particular location.

We do review our accident data on a regular basis and conduct special studies of areas where historical accident information points to some precautions that should be taken for the future. These are not related to one episode but to a general trend that might emerge from a substantial number of accidents.

Ms. **Ferraro**. That is precisely where I am concerned. We did have hearings, as I indicated before, in New York on the situation that exists with air traffic controllers. After listening to the testimony from both the FAA and the air traffic controllers, I kind of felt I was in the middle of a contract negotiation with everybody blaming somebody else. I did not know who was telling the truth or who was not or who was giving us their version of the truth. I guess that is the type of thing that I think that perhaps your Board should come in and really take an objective look at. Are you people qualified? I am genuinely asking this because I don't know. Are you qualified to come in and take a look at the printouts and the statistics that are given to you by the air traffic controllers and the FAA and make a determination as to whether or not in truth the computers are not sophisticated enough to handle it, in truth these people are worn out and not able to work? Or in truth they are deliberately doing that in order to get better pay on their contracts?

Mr. **Bursley**. I do not know what staffing it would take to do that kind of analysis on a substantial basis. As I mentioned, we did a one-time look at the ATC situation in San Diego. But that was not in the context of conflict between the various parties that the rules were or were not being followed. It was in terms of what was the product of the normally functioning system.

I would be hesitant to say that looking at days and days and weeks and weeks and perhaps even months of data would be the kind of thing that we would do well.

Ms. **Ferraro**. Would you review the incident that occurred last Friday at O'Hare? Would the National Transportation Safety Board review what was done, the——

Mr. **Bursley**. That was never identified as a safety matter of course, Ms. Ferraro.

Ms. **Ferraro**. But on request would you do that? Would you be capable of working up the statistics and finding out what occurred there?

Mr. **Bursley**. Let me turn to my technical people here and see.

I understand from staff, Ms. Ferraro, that, in terms of the technical expertise, we would be able to do that. But, in terms of the people resources required, we are very thinly staffed in this area. I think there are only four people.

Ms. **Ferraro**. But you do have the statutory right to go in and do that type of investigation as well?

Mr. **Bursley**. As a matter of fact, that has been a frequent source of concern to us, that our mandate is quite broad and how much of that mandate can we do on a regular basis.

Ms. **Ferraro**. Thank you. I am going to look into that.

Mr. **Anderson**. Thank you very much for your presentation, Mr. Bursley.

Mr. **Bursley**. Thank you, Mr. Chairman.

Mr. **Anderson**. Our next witness is Charles O. Miller, president of System Safety Inc.

We do have your prepared statement. It will be made a matter of record. We would appreciate it if you extemporize it.

[Statement referred to follows:]

Statement of C. O. Miller
Regarding the Safety Mission of the Federal Aviation Administration
Before the Subcommittee on Aviation of the
Committee on Public Works and Transportation
U. S. House of Representatives

August 20, 1980

INTRODUCTION

Enclosed as an attachment to this statement is a personal resume summary for the record. I appear before this Committee not representing anyone but myself. I am a safety professional; principally, but not exclusively, related to aviation. I am here because I am concerned about what is happening in air safety today ... particularly as it is influenced by the FAA and the NTSB.

Since this hearing addresses three bills designed to enhance the safety mission of the FAA, I shall confine my remarks principally to their role. However, I hope this Committee will become aware now or in the near future of the seriously degraded aviation function at NTSB in recent years since the Safety Board is clearly a vital part of the U.S. and international air safety system.

My experience with the FAA has been both from inside and outside the Federal government. As Director of the Bureau of Aviation Safety of NTSB from 1968-1974, I had direct contact with them at the Administrator and Service Director level. I saw personally their appalling conduct in failing to demand better crash survivability characteristics in aircraft 15-20 years after appropriate knowledge was available technically (e.g., absence of shoulder harnesses in light aircraft). I was personally involved in numerous major safety problems which became national issues (e.g., the role of airworthiness directives as illustrated by the Paris DC-10 crash).

I observed while at NTSB and beyond the heel dragging and incredible negativism by the FAA in two of the most important safety contributions I have ever seen come to pass in aviation ... the use of ground proximity warning systems and implementation of the Aviation Safety Reporting System. Both of these have demonstrated savings of lives, yet the FAA tried to kill both in their infancy.

Like many other citizens, I witnessed the Keystone Cops performance by the upper echelons of the FAA in the early aftermath of the Chicago DC-10 crash ... people making statements and decisions that could not pass muster technically at the time they were made. Yet the course taken was the political thing to do. I refer to the indefinite grounding of the aircraft without really knowing the problem and the aircraft had been flying for years.

I have been involved personally recently in trying to keep the proposed use of wide body jets at Washington National Airport in some meaningful perspective safety-wise. To make a long and somewhat sordid story short, I shall not go into the safety details. Rather, I ask how is it possible for Congressional committees to have hearings regarding the airport in April and May of 1980, presumably to include matters relative to operational safety, yet a report specifically dealing with this and approved by senior FAA operations personnel did not surface until sought under a Freedom of Information Act request by a senior year law student who happened to be taking an FOIA course -- me!

On the other side of the ever-present proverbial coin, I have considerable sympathy and empathy for the folks at 800 Independence Avenue, in the control towers, radar facilities, flight service stations, research facilities et al. I know of countless dedicated, hard-working people at all levels who have been getting another ever-present proverbial something ... a "shaft" in the form of a parade of Administrators, acting or otherwise over the years; political games being played with funds and/or positions for the agency; a "con" job by the present administration in establishing the Senior

Executive Service which is making it even more difficult to retain qualified personnel; and the insatiable appetite of expectations by the public despite the economic doldrums in which we and everyone else but the super oil producers seem to find ourselves.

I've been in some ticklish and visible decision-making positions myself so I'd like to think I have some appreciation for the difficulties faced by Mr. Bond. On the other hand, the excellent air safety record of today has not been achieved by people patting each other on the back; nor has it been achieved by an adversary relationship which is even worse and seems to prevail today. Air saafety is achieved by people communicating ideas openly and not taking comments in any sense other than as a constructive attempt to improve matters. It is in this vein that I submit the following regarding the FAA's air safety role.

FUNDAMENTAL PROBLEMS

1. The "Highest Degree of Safety" Syndrome

Contained in Section 102(a)(2) of the FAA Act of 1958 as part of a policy for air transportation is a reference to "... dedication of the Congress to the furtherance of the highest degree of safety in air transportation ... (which) has become to be expected by the traveling and shipping public." This was a policy actually aimed at "The Board," meaning Civil Aeronautics Board (CAB) in the rates and routes business and perhaps in their safety regulation role prior to 1958. Nevertheless it has been picked up as applying to the FAA.

When taken literally, of course, -- and many people do just that -- "highest degree" of safety is ludicrous. The highest degree is achieved by not letting the aircraft fly at all or, for example, allowing them to fly only in clear weather. Others modify the term, as did Congressman Matsui in Section 2(a) of the proposed H.R. 7850, where it is stated:

> ". . . the general welfare and public interest require effective action by the Federal Government to insure that the highest possible degree of air safety in air transportation and air commerce is furthered and maintained." (Underlining added.)

This still begs the issue somewhat by not clearly recognizing the modern relationship between safety and the overall objective we pursue; that is, effective, economic air transportation within reasonable risk to the public. Safety thus becomes only a part -- a vital part to be sure -- of that objective. It is not something to be held aloof ... not a sacred cow never to be compromised.

We, as individuals, make compromises to our own personal safety day in and day out. Can we expect our government to do otherwise? I submit what we want is ourselves and the FAA to take intelligent risks* consistent with what we are trying to accomplish. Those who emote the cry "Safety First" may be right in the close call decisions, but when they become "Safety Only" advocates, they do everyone a disservice.

FAA Administrators -- and Congressmen as well -- tend to get tied up by socio-political pressures to reassure the public; "We'll never compromise your safety" or words to that effect. Actually, that attitude can become counterproductive to safety. It raises expectations far beyond what can be delivered. It implies a mission restrictive meaning to safety work which is simply not true with professional application of safety principles.

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*See Willis M. Hawkins, "The Challenge to Take Intelligent Risks", Aeronautics and Astronautics, July/August 1979 @ 36.

A mature approach -- an honest approach -- with the public is avoidance of the "highest degree" of safety connotation to one of "highest practicable degree" consistent with a viable air transportation system. If you look hard enough for this concept in the FAA archives, you will find this in a 1965 "Red Book" policy document. However, I have not heard FAA Administrators take direct issue with Sec. 102 of the Act of '58 in the twelve years I've been in Washington.

Perhaps the Act should be changed. At least any further legislation should avoid the "highest degree" syndrome.

2. Application of Modern Safety Technology

Modern safety technology is an outgrowth of aviation/aerospace difficulties encountered in the 1950's when complex jet equipment hit the military services. It resulted in design and management techniques which to this date have not become requirements to any significant degree in the Federal Air Regulations.

Specifically, the FAA has no equivalent to MIL-STD-882A, the DOD System Safety Program Requirements standard or other design safety documents found in the military. The FAA has approached aircraft certification on a fragmented basis as pointed out by the Low report.* The result has been that hazard modes and effects analysis, human factors technology, modern safety engineering and management techniques et al have been implemented in civilian aviation only as much as the manufacturers or operators chose to do so. And they are not going to be too innovative if the competition can get away with something less.

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*National Academy of Sciences, "Improving Aircraft Safety," A Report of the Committee on FAA Airworthiness Certification Procedures," headed by George M. Low.

The FAA has followed, not led in the safety engineering and management field if, indeed, they have been in the parade at all.

This is strikingly similar to what I found in my study of the Nuclear Regulatory Commission, having been retained by them after the Three Mile Island accident,* and what I found at NASA after the Apollo fire that killed the three astronauts at the Cape. Both NASA and now NRC have given program visibility to specialized safety work in addition to safety being implicit in everybody's job. FAA has made minimal effort in this regard with their Office of Aviation Safety being severely restricted in organization position, manpower and function since its reluctant formation only a few years ago.

3. Preoccupation With Rule Development, Enforcement and FAA's Legal Position

It may be a condition endemic to regulatory agencies, but the FAA's approach to operational safety has been predominently to write a rule, enforce it within practical manpower available and that's all that is required. Similarly, when considering equipment or facilities, the approach has been to certify per certain rules and thus conclude things are safe. Or to quote a former FAA Administrator, "Of course it's safe, we certified it."

Unfortunately, that theory is antiquated in terms of safety technology discussed earlier. Not that rules, their being followed and being enforced equitably are not significant, they are; but only as the first step of an effective safety program. What is damaging is when the legalities of the situation -- sometimes combined with protecting the FAA's backside -- predominate over the main objective; namely to prevent accidents.

Some examples are especially appropriate here.

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*See C. O. Miller, "Safety Management Factors Germane to the Nuclear Reactor Accident at Three Mile Island, Mar. 29, 1978," NRC Special Inquiry Group, "Three Mile Island, A Report to the Commissioners and to the Public," Vol. II, Part 3, # 1213.

- The Systemsworthiness Analysis Program ... begun originally as a non-enforcement oriented accident prevention technique successful in the military service; degenerating into just another inspection under pressure of the FAA Office of Chief Counsel, Congress, the Nader group, etc.

- The language of the rules being governed by anticipated legal challenge rather than understanding and practicality by pilots: e.g., the "see and avoid" sections of Part 91.

- FAA rules about participating in NTSB directed accident investigations ... the predominent role given FAA lawyers in sanitizing controller and other FAA employee statements.

- A case not revealed publicly until now that surfaced many years ago. An FAA employee showed a NTSB investigator a proposed insert to the air traffic controllers manual to provide certain warnings about possible wake turbulence, only to have it red-lined out by the Chief Counsel's office because it would compromise FAA's liability position in the event of an accident.

The FAA's image in this legal influence respect was not exactly enhanced not too long ago when the former head of the Litigation Division of the Office of Chief Counsel was named head of the Office of Aviation Safety!

4. The Can't Do Attitude

Much has been made in the media lately of Administrator Bond and Secretary Goldschmidt's defeatest attitude towards the future growth of aviation, especially general aviation (e.g., Flying, August 1980 @ pp. 20-24). Initiative, not negative thinking was pleaded for (Av. Week and Space Technology, July 7, 1980 @ 11). However, this is not, in my judgment, a recent development, and not necessarily a product of the economic times.

When examining the perceived procrastination of the FAA in technical areas such as the aforementioned crash survivability and ground proximity warnings, or in other areas like mid-air collision avoidance, one gets the distinct impression the FAA is always looking and waiting for the total solution. They seem to be unwilling to take incremental improvements even at reasonable intervals, in favor of trying to get rid of the problem once and for all.

A first cousin of that "can't do" outlook is "We've done it this long with good results, why change?" No one denies the need for regulation stability and avoidance of unnecessary requirements. But without a management policy that recognizes and accounts for the dynamics of our society or its technology, one will not only fail to progress but also will fall headlong in the other direction.

A quotation from a respected colleague of mine, I. Irving Pinkel, would seem appropriate here. It was sent to me in 1963 when I was particularly discouraged at what I perceived happening in the crash survivability field even then.

> Every activity is obliged to improve its safety record where it can. Those who insist on ignoring the smaller safety problems about which something can be done, pointing to the larger problems about which nothing can be done yet, are mostly evading the issue. Most safety measures adopted deal with small portions of the total hazard. Over the years, the steady improvement that results is significant. If each step is discouraged because it doesn't solve the whole problem, then nothing is accomplished.

5. The Rape of Aviation to Solve Other Problems

Here we divert from the FAA and enter the realm of DOT and even higher authorities within the Executive Branch. I need only to say "trust fund" and I believe my point may be made.

Nevertheless, the question that really arises is whether aviation which, as noted earlier, led this nation in safety technology since World War II is going to be allowed to stagnate while other modes catch up. Indeed in crash survivability, auto technology has probably passed aviation.

This is not a matter just of funds extracted from taxes paid by aviation users or operators. It is the amount of attention given to aviation safety matters at the Secretary's staff level at DOT, in the NTSB and at OMB. It is whether personnel without aviation experience will continue to make critical aviation safety decisions at the above locations without the public becoming involved until the matter has become fait accompli.

If, in fact, the parties just mentioned see aviation no longer needing aggressive support for safety effort since other transportation modes or activities need it more in the public interest, let them say so. Don't try to mislead the public into a false sense of security that everything that can be done is being done for everyone. The public may well accept better balanced effort if it is explained to them.

The only fallacy in the above rationale (or rationalizaton) is the truism that the healthy have to be nurtured as well as the sick or the overall level of capability may decline.

RECOMMENDATIONS

So much for some fundamental problems underlying the proposed legislation, what position do I take ... what recommendations do I have to offer?

First and foremost I commend the Committee to study the "Low" report carefully. Its findings and suggestions are generally excellent in my opinion and in principle, go well beyond the airworthiness problem. The report did not stress the life cycle aspects of system program management as much as it might have nor did it acknowledge the specific safety technology input to the degree I might have done; but these points are more than offset by a superb final chapter, "Leadership & Advice." Following the recommendations contained therein regarding selection of FAA Administrators, the use of advisory groups, and industry responsibility would go at least faster if not as far as any organization change contemplated by the bills before this Committee.

I would also suggest review of my NRC study and related findings of the NRC Special Inquiry Group. The significance of looking at the NRC/TMI case study is the fact that NRC was formed in 1974 with the intention of its being strictly a safety agency. They were to be separated totally from the development and promotion side of the nuclear energy house which went to the Energy Research and Development Agency (now integrated into the Department of Energy). As testified to by the TMI experience, the agency's charter was not enough.

Finally, let me comment personally on the three bills prompting this hearing, with the caveat that I have not yet had the time to review them in full detail.

H.R. 351 ... Congressman Goldwater's bill to establish an FAA independent from DOT

As strong an advocate as I am for aviation, I am also a citizen concerned with a far better integrated transportation system than presently exists. I feel the problem is not with the organization structure as much as it is with the people and functions impacting air safety at the decision level. I cannot basically support a theory that you correct management problems by organization changes except as a last resort. Public visibility of what's going on (e.g., who really made the decision on the safety of wide body jets at DCA) and the leadership and advice recommendations of the Low report are steps that can and should be made before going for more independence from DOT.

H.R. 6771 ... Congressman Levitas' bill to force the FAA to perform only functions related to aviation safety

This, I regret to say, seems to me to be an oversimplification of the problem as testified to by the NRC experience and the 45-year history of trying to resolve safety v. development questions following Senator Cutting's air crash May 6, 1935.* It flies in the face of the precept that safety tasks are part of the totality of effort by management which must, as a matter of real world practicality, merge cost, schedule and performance factors (including safety performance) into the best system for the public.

What frightens me is that, assuming merit to that precept, restricting FAA from performing "any functions, powers and duties other than those pertaining to aviation safety" abdicates the ultimate decisions to people who may not have aviation experience. Should this be overcome by Congressional oversight of how DOT would then implement its role (reference lines 15-21 of p. 2 of the Act), the system might have some benefits. As discussed earlier, however, modern safety management keeps the safety efforts as part of the overall team, not as an outside function. The one exception to this is the investigation task which to some degree must be kept free of the line organization.

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*See N. A. Komons, "Bonfires to Beacons," and S. I. Rochester, "Takeoff at Mid Century," John M. R. Wilson, "Turbulence Aloft," and Richard J. Kent, "Safe, Separated and Soaring, A History of Federal Aviation Civil Aviation Policy, 1961-1972," Gov't Printing Office, Washington, D. C.

H.R. 7850 ... Congressman Matsui's bill to establish an Air Safety Administration as distinguished from an Aviation Operations Administration

This bill has a significant feature in that it would separate the aviation system operations function (e.g., air traffic control) from the so-called "air safety" function. The latter would be within an independent regulatory agency whereas the operations people would remain under DOT. This has a distinct advantage of not having the "air safety" functions submerged attention-wise or budget-wise in the vastly greater operations activity. Those who criticize the FAA today for being too large and too controlling tend to forget that the overwhelming majority of the FAA personnel perform services, not regulation.

The distinct disadvantage is the problem of defining "air safety" activities ... the same problem faced by H.R. 6771. For example, as presently constituted, H.R. 7850 assigns Titles IV and V of the FAA Act to the proposed Air Safety Administration. These are Air Carrier Economic Regulation and Nationality and Ownership of Aircraft respectively ... two rather strange functions for air safety.

Actually, what Mr. Matsui has proposed is something akin to the Civil Aeronautics Board as it existed from 1940-1958. The differences are that in those days both the CAB and the Civil Aeronautics Administration were under the Department of Commerce albeit CAB was there "for housekeeping purposes only." Also CAA had some of the functions (e.g., R&D) that H.R. 7850 currently leaves with the Air Safety Administration. The point to keep in mind is that variations of the safety regulation, aviation development and, indeed, accident investigation have been tried since 1938. The lessons of this history should be analyzed carefully lest old problems are revived while trying to solve current ones.

My reaction to H.R. 7850 is that it addresses more of the issues than the other two proposals and more separation of operations from other functions is desirable, but the bill is a long way from being viable.

CONCLUDING REMARKS

The U.S. record of aviation safety is good. It can always be made better.

It is most appropriate that this committee pursue these aviation safety matters now. Many people are willing to take positive remedial action immediately after a tragedy. Only the most astute are willing to take preventive action in a period of few accidents.

That serious problems exist at FAA is probably not open to serious debate either from within the agency or from the outside. These problems are not, in my opinion, a product of only the relatively few people at fault in the FAA, the organization itself or FAA's juxtaposition with DOT. These are factors to be sure, but so is the influence of our economic times and the sometimes unreasonable expectations of the public.

I plead only for application of modern safety engineering and management techniques to the structuring and functioning of FAA ... something which I have seen very little of during my time in Washington. Also, as organization changes are considered by the Congress please examine past history as well as the challenges expected in the future.

Finally, I reiterate my contention of some organizational and functional problems at NTSB similar to those found at FAA. Indeed perhaps the overall question of safety regulation and investigation within the Federal structure needs examination. No national policy exists in this area.

Mr. **Anderson**. Please proceed.

TESTIMONY OF C. O. MILLER, PRESIDENT, SYSTEM SAFETY INC.

Mr. **Miller**. Mr. Chairman, in a somewhat unusual situation, I suspect, I am here before this committee not representing anyone but myself, albeit as a safety professional of over 25 years working directly in aviation; whether you are talking operations, engineering, management, or recently in law.

I am here because I am concerned about what is happening in air safety today particularly as it is influenced by the FAA. I am also concerned about NTSB, but that goes beyond the general scope of my comments today.

My experience with the FAA has been both from inside and outside the Federal Government. As Director of the Bureau of Aviation Safety of NTSB from 1968 to 1974, I had direct contact with the FAA at the administrator and service director level. I have seen some rather pitiful FAA conduct over the years whether you are talking crash survivability, inadequate use of airworthiness directives, circa the DC–10 Paris crash. I have witnessed heeldragging on some of the most progressive aviation safety things I have ever seen, namely the ground proximity warning system and the aviation safety reporting system.

I saw what I would describe as a Keystone Cops performance in the aftermath of the Chicago DC–10 crash that led to the indefinite grounding of the airplane. The most recent case in point is cited in my prepared text because I have been involved as a citizen in trying to keep the proposed use of wide-body jets at Washington National Airport in some kind of a safety perspective. To make a long story and a sordid story rather short, I will not get into the safety details. But I would like to pose a question: How is it possible for congressional committees to have hearings in April and May of 1980, presumably to include matters relative to the airport's operational safety, yet a report written in January of this year specifically dealing with the airport's safety and approved by senior FAA operations personnel did not surface until sought under a Freedom of Information Act request in June of this year by a senior law school student who happened to be me? Why they kept this report quiet is symptomatic, in my judgment, of one of the major problems facing the FAA.

On the other side of the ever-present proverbial coin, I have considerable sympathy and empathy for the folks there at 800 Independence Avenue, in the control towers, flight service stations, research facilities, and so forth. I know personally of countless dedicated, hard-working people at all levels who have been getting another ever-present proverbial something. If you'll pardon my expression, they have been getting a shaft. They have been getting a shaft in the form of a parade of administrators, acting or otherwise, over the years; political games being played with funds and/or positions for the agency; a con job by the present White House in administering the Senior Executive Service which is making it even more difficult to retain qualified personnel; and indeed they have been subject to the insatiable appetite of expectations of the public despite the economic doldrums in which we and everyone else but perhaps the super oil producers seem to find themselves.

I know the FAA has tried to make changes, and changes do not produce results overnight.

I have been in some ticklish and visible decisionmaking positions myself, so I would like to think I have some appreciation for the difficulties faced by Mr. Bond. Indeed, I am concerned about an adversary relationship which seems to prevail among everybody today. Actually, air safety is best achieved by people communicating ideas openly, not fighting with one another.

It is in this vein that I offer some comments on what I perceive is some fundamental problems affecting the FAA.

First is the highest degree of safety syndrome. This comes from the FAA Act of 1958. I quote as follows for air transportation: "Dedication of the Congress to the furtherance of the highest degree of safety in air transportation" which "has become to be expected by the traveling and shipping public." This was a policy actually aimed at the Civil Aeronautics Board in the rates and routes business. Nevertheless it has been picked up and applied to the FAA both within the FAA and in the courts.

When taken literally, of course—and too many people do just that—"highest degree of safety" is ludicrous. The highest degree of safety is achieved by not letting the aircraft fly at all.

We as individuals make compromises to our own personal safety day in and day out. Can we expect the government to do otherwise? I submit that what we want is ourselves and the FAA to take intelligent risks consistent with what we are all trying to accomplish, and that may be as simple as getting from point A to point B.

FAA administrators and Congressman as well tend to get tied up by the sociopolitical pressures to reassure the public. We hear: "We'll never compromise your safety" or words to that effect. Actually, that attitude can become counterproductive to safety, in my opinion. It raises expectations far beyond what can be delivered. It implies a mission restrictive meaning to safety work which is simply not true with professional application of safety principles.

Perhaps the FAA Act should be changed to the highest practicable degree of safety. At least any further legislation should avoid this highest degree syndrome.

My second problem area is the lack of application of modern safety technology by the FAA.

Modern safety technology, is an outgrowth of the aviation and aerospace difficulties encountered in the 1950's when complex jet equipment hit the military services. It resulted in design and management techniques which to this date have not become requirements to any significant degree in the Federal air regulations.

The FAA has followed, not led, in the safety engineering and management field. Indeed, they have not been in the parade at all, at least until very recently. This is strikingly similar to what I found in my study of the Nuclear Regulatory Commission, having been retained by them after the Three Mile Island accident. It was similar to what I found at NASA after I was retained by them after the Apollo fire that killed the three astronauts on the cape. Both NASA and NRC have now given program visibility to specialized safety work in addition to safety being implicit in everybody's job. FAA has made minimal effort in this regard with their Office of Aviation Safety being severely restricted in organization position, manpower and function since its reluctant formation only a few years ago.

I might add that, if the committee wishes to find out more about how that Safety Office was formed, call Oscar Bakke, former Associate Administrator of the FAA.

The third item I would hit the FAA preoccupation with rule development, enforcement and protecting their legal position.

It may be a condition endemic to regulatory agencies, but the FAA's approach to operational safety has been predominently to write a rule, enforce it, and thinking that's all that is required for safety. Similarly, when considering equipment or facilities, the approach has been to certify per certain rules and thus conclude things are safe. Or to quote precisely a former FAA administrator: "Of course it's safe, we certified it."

Unfortunately, that theory is antiquated in terms of safety technology I discussed a moment ago. Rules are only a first step in an effective safety program. I take considerable issue with the administrator, who stressed earlier the importance of enforcement and punishment. That it is only a first step, and often misued.

What is particularly damaging is when the legalities of the situation sometimes combined with protecting the FAA's backside predominate over the main objective, namely, to prevent accidents.

I have provided some examples in the main text involving systems worthiness analysis program; what I will call the stupid see-and-avoid sections of part 91 regarding midair collision avoidance; and FAA rules regarding their participation in NTSB accident investigations, where they protect their people beyond words.

I would like to comment now, however, on what I think is one of the most distressing things I ever saw while at NTSB having to do with this preoccupation with legal positions. After a wake turbulence accident at JFK, an FAA employee showed an NTSB investigator an earlier excellent proposed insert to the air traffic controllers manual which would have prevented that particular accident, only to have the passage redlined out of the proposed manual by the Chief Counsel's Office because it would compromise FAA's liability position in the event of an accident.

We never made that a part of the public record to protect the identity of the FAA person involved.

The FAA's image in this legal influence respect was not exactly enhanced not too long ago when the former head of the Litigation Division of the Office of Chief Counsel was named head of the Office of Aviation Safety. Intelligent and hard working though this man was who was named to that position, the image projected led me and others to simply shake our heads when we first heard it.

My fourth point is the can't-do attitude. Much has been made in the media lately of Administrator Bond and Secretary Goldschmidt's defeatest attitude toward the future growth of aviation, especially general aviation. However, this is not, in my judgment, a recent development and not necessarily a product of the economic times.

When examining the perceived procrastination of the FAA in technical areas, one gets the distinct impression the FAA is always looking and waiting for the total solution. They seem to be unwilling to take incremental improvements even at reasonable intervals in favor of trying to get rid of the problem once and for all.

In my prepared statement I show you a full text of a creed I have come to accept which is rather different from what I have heard from the FAA today. It ends up: "If each step is discouraged because it doesn't solve the whole problem, then nothing is accomplished."

The last fundamental issue I cite is what I call the rape of aviation to solve some other problems.

Here we divert from the FAA and enter the realm, the mysterious realm, of DOT and even higher authorities within the executive branch including OMB. I need only to say "trust fund" and I believe my point may be made.

Nevertheless, the question that really arises is whether aviation, which led this Nation in safety technology since World War II, is going to be allowed to stagnate while the other modes of transportation catch up. And please be advised that I have worked with some of the other modes.

There is a truism that the healthy have to be nurtured as well as the sick or the overall level of capability will decline.

So much for the fundamental problems. What recommendations do I have to offer?

First and foremost, I commend the committee to the recent Low report and suggest that they read that carefully. Its findings and suggestions are generally excellent, in my opinion, and in principle go well beyond the airworthiness problem. Particularly there is a superb final chapter entitled "Leadership and Advice." Following the recommendations contained therein regarding selection of FAA administrators, the use of advisory groups, and industry responsibility would go at least faster if not as far as the organization changes contemplated by the bills before this committee.

I would also suggest a review of my NRC study and the related findings of the NRC Special Inquiry Group. The significance of looking at that case study is the fact that NRC was formed in 1974 with the intention of its being strictly a safety agency, one of the things that is being proposed here for the FAA. NRC was to be separated totally from the development and promotion side of nuclear energy; but, as testified by the TMI experience, the agency charter was far from being enough.

Finally, let me comment personally on the three bills prompting this hearing.

On Congressman Goldwater's bill to establish an FAA independent from DOT, well, as strong an advocate as I am for aviation, I am also a citizen concerned with a far better integrated transportation system than presently exists. I feel the problem is not with the organization structure as much as it is with the people and functions impacting their safety at the decision level. I cannot basically support a theory that you correct management problems by organization changes except as a last resort. Public visibility of what's going on between FAA and DOT, for example, and the leadership and advice recommendations of the Low report are steps that I think can and should be made before considering going to independence from DOT.

Congressman Levitas bill, I regret to say, seems to me to be an oversimplification of the problem, as testified to by the NRC experience and the 45-year history of trying to resolve the safety versus development questions in aviation. It flies in the face of the precept that safety tasks are part of the totality of effort by management which, as a matter of real world practicality, must merge cost, schedule, and performance factors including safety performance into the best system for the public.

What frightens me is that restricting the FAA from performing as the act says: "Any functions, powers and duties other than those pertaining to aviation safety" abdicates the ultimate decisions to people who may not have any aviation experience whatsoever. Should this be overcome by congressional oversight the system might have some benefits. As discussed earlier, however, modern safety management keeps the safety efforts as part of the overall team, not as an outside function. The one exception to this is the investigation task which to some degree must be kept free of the line organization.

Congressman Matsui's bill has a very significant feature, in my opinion, a distinct advantage of not having the air safety function submerged attentionwise or budgetwise in the vastly greater operations activity. Those who criticize the FAA today for being too large and too controlling tend to forget that the overwhelming majority of FAA personnel perform services, not regulation.

The distinct disadvantage is the problem of defining air safety activities, the same problem faced by Mr. Levitas' bill.

Actually, what Mr. Matsui has proposed is something akin to the Civil Aeronautics Board as it existed between 1940 and 1958. The only point I suggest be kept in mind is that variations of the safety regulation, aviation development and, indeed, accident investigation have been tried since 1938. The lessons of this history should be analyzed carefully lest old problems are revived while trying to solve current ones.

My overall reaction to H.R. 7850 is that it addresses more of the issues than the other two proposals and more separation of operations from other functions is desirable, but the bill is a long way from being viable.

In conclusion, I would say this: I think the U.S. record of aviation safety is good. It can always be made better.

It is most appropriate that this committee pursue these aviation matters now. Many people are willing to take positive remedial action immediately after a tragedy. Only the most astute are willing to take preventive action in a period of relatively few accidents which has been the case lately at least in this country.

That serious problems exist at FAA is probably not open to serious debate either from within the agency or from the outside. These problems are not, in my opinion, a product of only the relatively few people at fault in the FAA; nor are they based on the organization itself or the FAA's juxtaposition with DOT. These are factors, to be sure, but so is the influence of our economic times and the sometimes unreasonable expectations of the public.

I plead only for application of modern safety engineering and management techniques to the structuring and functioning of FAA, something which I have seen very little of during my time in Washington. Also, as organization changes are considered by the Congress, please examine past histories as well as the challenges expected in the future.

Finally, I reiterate my contention which I did mention earlier in my printed text. Organizational and functional problems exist at NTSB very similar to those of the FAA. I would hope this committee would look into it. Indeed, perhaps an overall question of safety regulation and investigation exists within the entire Federal structure. I have had occasion in the last few months to do a personal study in this area. I can tell you that no national policy exists in matters of safety for the U.S. Government. Thank you, Mr. Chairman.

Mr. ANDERSON. Thank you, Mr. Miller. In your testimony you suggest that we should get away from what you call the highest degree of safety syndrome and we should move toward the highest practicable degree of safety. This, of course, involves a judgment call and how much benefit we want for certain costs. Do you have any thoughts on how we should define practicable?

Mr. MILLER. Yes. To begin with, it is certainly not something that can be quantified except in a relative sense.

This is an age-old question in hazard analysis and safety work. I think one also must appreciate that safety decisions are made on the basis of several things. First and foremost, they are based on what I will call the moral ramifications. Neither you nor I nor anyone else wants to see anybody hurt or killed. Then the decisions are made on the basis of economic points. Decisions are also made on the basis of capability to carry out the mission. Let me give you an example of what I mean by that.

You don't see too many helicopters flying around between Disneyland and Los Angeles at the airport anymore, nor do you see them operating off the PanAm Building. You can, if you do not make the wrong safety decisions, literally wipe out a mission.

There is yet another factor. People will say: How is it going to affect me; is my life in danger?

What I am leading up to, in answer to your question, is a plea to understand totally the things that motivate people relative to safety. What I have heard in this hearing, among other places, is that people tend to argue the moral point, or they might argue the economic point, or they might argue the mission point, or they might argue the personal involvement point. There is another one I forgot to mention—the ego factor, where people are worried how they are going to look, depending on which way they make their decision.

My answer to your question, however, is that it is a judgment call, as you say, but it must include all of the factors I just described.

Mr. ANDERSON. In your testimony you indicate that the FAA does not have the same modern approach to safety as the Department of Defense. Could you give us a general explanation of how the safety program of the Defense Department differs from the FAA's program?

Mr. Miller. The Defense Department, as early as 1963, began what they call a system safety concept. System safety, in one defintion or another, is the integration of skills and resources for the specific purpose of achieving accident prevention over an entire life cycle of the system.

Now, how does that differ from the FAA? It differs because you will not find in the FAA any real total program life cycle documents, whether they are planning documents or otherwise—at least until I heard Mr. Bond mention something like that today.

So, you have to examine your system, be it a commercial airliner or a bomber or whatever it is, in terms of a life cycle. From the day it starts until the day it is buried.

The people who are involved in the early stages of system development should have the input of those who are going to be operating it out at the far end. Similarly, the people, if they are looking at a system when it is in operation, should have the clear program visibility of what took place earlier.

The military has what they call Mil Standard 882A, which is a system safety program requirements document. They have other manuals and publications which support the standard. They have what they call system safety groups that meet periodically throughout the life history of an airplane. They are concentrating on safety as something special; something beyond safety being just everybody's job. That is the difference. I have never seen that concept in the FAA.

Mr. Anderson. You indicate that the Nuclear Regulatory Commission and the National Aeronautics and Space Agency have been similar to the FAA in not following modern safety techniques. The NASA and NRC have recently taken steps to improve their safety program. Would you describe any steps which these agencies have taken which might be relevant to the FAA?

Mr. Miller. Beyond the engineering activity which, for all practical purposes, I summarized a moment ago, let me answer your question now with respect to the management activity. At the time the Apollo 204 fire, NASA had little, if any, coordination of safety office at the various NASA centers or the headquarters office. They did not have a package of policy documents or regulations, if you will, to supplement the policy such as: Here is how we as NASA are going to operate; here are certain safety planning documents that we are going to require of anybody that comes in and builds one of our vehicles; here are the things that we are going to insist upon in the hazard modes and effects analysis field; here is how we are going to analyze all of our problems and feed back that information to the people who made some assumptions earlier. I could go on.

After the Apollo fire, when I was called in, NASA set up a management structure which would insure what I have referred to in my text as being a specialized safety engineering and management effort.

The same fundamental problem occurred at NRC, much to my distress. What we found there was a group of extremely, highly proficient, very proficient people in the nuclear engineering and science field, yet they did not know that certain of these techniques I referred to even existed.

In both instances, after the Apollo fire, which was well over 10 or 12 years ago, and indeed since last fall, when this material was communicated to the NRC, they have started to set up the techniques that were developed in the military—system safety techniques which I personally have been teaching since the mid-1960's in university environments with very few, if any, FAA people ever in attendance.

Mr. ANDERSON. You comment on the FAA's systems worthiness analysis program, which in your opinion was originally a successful program but recently has been degenerating into just another inspection under pressure of the FAA's Office of Chief Counsel, Congress, the Nader group, et cetera. Would you describe this program and the changes which have taken place in it?

Mr. MILLER. Yes, sir. As it was originally constituted, it was proposed as what we in the safety trade call a "safety survey" approach, as distinguished from a safety inspection.

Let me make the distinction. A safety survey is one in which you get highly qualified people to go out to an agency and you literally help them. You look at what is going on, give them benefit of your knowledge. On a nonenforcement, nonpunitive basis you say: Look, fellows, here's what you look like from the outside. This is not unlike what you run into in the basic management field, where you bring in a consultant. It is a relatively close-knit, unpublicized, nobody-gets-their-fingers-rapped approach. This has been demonstrated in safety technology as an extremely valuable accident prevention technique.

FAA started to do that. But, when they began, some people I have reason to believe in their own legal office, certainly the Nader group, and some members of Congress said: How dare you get in bed with the operator or the manufacturer; we demand to know everything you learn. The agency succumbed to that criticism instead of standing up for a very valuable accident prevention technique.

That is what happened to the systems-worthiness analysis program. Now it is just another inspection, different name; but you lose that personal communication with the people in the activity, be it a manufacturer or an airline. You lose their confidence the minute you come out there with a badge on.

I am not suggesting inspections do not have their role, far from it. Surveys and inspections are two different things, and the FAA has chosen not to use the survey approach.

Mr. ANDERSON. On page 7 you indicate that the FAA's chief counsel's office would not let language about wake turbulence go into an air traffic controllers manual because of possible liability. Can you give us the general thrust of the proposed language? Was it a directive to controllers to warn pilots about possible wake turbulence?

Mr. MILLER. Yes, sir, it was. It followed, as I said earlier, an accident at JFK where a commuter type airplane took off from an intersection of a runway. A passing DC-8—took off and was airborne before the intersection. The proposed air traffic service language, as I recall it, was to put in the manual some type of a time interval or a caution which identified the source of possible wake turbulence. This was about 8 or 10 years ago, to be sure, and I hope it is not still happening.

One of my investigators came to me and said: look, I have a ticklish situation here; here's what I found out. I said: well, can we document it; can we get it into the record? He said: no, revealing my source will kill the poor guy. I took it upon myself to go mention this to some people within the air traffic service. I was able to, in a sense, do something personally to control this particular problem. I emphasize the FAA does not recognize that they have an obligation that goes well beyond protecting the Federal Government from liability when it comes to matters of safety.

Mr. **Anderson**. You suggest that air traffic control is an operations function rather than a safety function. Why do you draw this distinction? Does not the air traffic control system have an important effect on safety?

Mr. **Miller**. Everything has an important effect on safety. When I made the statement I was trying to draw the distinction between those things which are, if you will, generic to the entire operation, to those things which you do in a specialized approach to safety. I think therein lies a big problem in certainly how I look at the FAA and what I heard described about the FAA here today. The people who say everything is safety, I think, are just avoiding recognizing there are certain specific things you do which have grown up basically in safety engineering and management technology in the last 20 or 30 years. Such things go beyond what the air traffic controller might be doing in his regular job.

I may not be making myself clear on this. When I say specialized safety, I am looking for something beyond what the normal air traffic controller is doing. To be sure, he has a big role in safety anyway you cut it. So do I as I drive down Independence Avenue.

Mr. **Anderson**. Mr. Fary?

Mr. **Fary**. I have no questions, Mr. Chairman.

Mr. **Anderson**. Thank you very much, Mr. Miller, for an excellent presentation.

Our next witness is Mr. Lawrence C. Cushing, president, National Association of Air Traffic Specialists.

We do have your prepared statement. It will be made a matter of record.

[The following was received for the record:]

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STATEMENT
before the
SUBCOMMITTEE ON AVIATION
THE HONORABLE GLENN M. ANDERSON
CHAIRMAN

COMMITTEE
on
PUBLIC WORKS AND TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES
Ninety-sixth Congress

on

H.R. 351, H.R. 6771, H.R. 7850
"HOW TO IMPROVE THE FEDERAL AVIATION ADMINISTRATION'S ABILITY TO DEAL WITH SAFETY HAZARDS"
"IMPROVING AIRCRAFT SAFETY"

by

LAWRENCE C. CUSHING, PRESIDENT
NATIONAL ASSOCIATION OF
AIR TRAFFIC SPECIALISTS

August 21, 1980

Mr. Chairman and Members of this Subcommittee, I deeply appreciate this opportunity to appear before you and to testify on the important subjects before this Committee.

This Association has been invited to comment on three Bills, two reports, and any other subjects which relate to aviation safety improvement.

On December 6, 1979 we appeared before you on "The Safety of the Air Traffic Control System" and we are indeed heartened by the fact that you have already initiated action on one of our recommendations relative to prohibitions of flight service station closures.

H.R. 351, H.R. 6771, and H.R. 7850 collectively, in one approach or another, seek to change the FAA's charter, mission, organization or to locate the Administration in some other area of the Executive Branch. All of these proposals have merit and probably will work if pursued with diligence, as is the case with the present organization. Such attempts in other Departments in the past have resulted in massive transfers of personnel from one organization to another in order to properly carry out and to continue a same required function, and frequently at higher pay grades. In fact H.R. 351 paves the way for increased grades by stipulating that compensation will be not less than the rate provided in the previously held position.

Removing the FAA from the Department of Transportation may have beneficial effects in some details of aviation safety, but denying aviation safety the benefits of representation by an official of Cabinet rank appears to this Association to place in jeopardy all major safety programs. It is believed that Cabinet rank representation transcends advantages which may be afforded by independent Agency status.

Since this entire matter is under study, another avenue would be to create an Assistant Secretary of Transportation for Aviation to replace the FAA Administrator. At the same time a review of the FAA Regions with the objective of elimination or consolidation of regions would be most proper. Personnel savings thus achieved would be available for the retained Regional Headquarters, if any, and for an expanded staff of the Assistant Secretary. This action would eliminate current duplication in regional headquarters, eliminate inconsistencies in policy, and result in greater efficiency, all to the benefit of aviation safety.

The report "Improving Aircraft Safety" published by the National Academy of Sciences, while limited in scope, contains some facts and interesting observations which are worthy of comment.

First is the composition of the thirteen member Committee. Four of the members are from academia, seven are from industry or private enterprise, one is from government, and the last is a lawyer. Of the thirteen members, five are labeled with the adjective "former" or "retired". While the Academy claims "appropriate balance" and perhaps it is from their point of view, we would be far more comfortable with the findings if the Committee had had "appropriate" representation from labor and that there had been less use of the adjectives "former" and "retired".

For example the Committee states, "With the exception of the flight crew, no group has a greater effect on aircraft safety than the maintenance workers at the airlines." Both of these groups are part of the labor force and the Committee states that they stand in front of ALL other groups in their effect on aviation safety. It seems to us that labor representation on the Committee would have been vital in developing study scenarios on personnel groups as important as these.

Similarly, the Committee omits labor representation in its speculation relative to the composition of its proposed "Senior Technical Advisory Committee" and its proposed "Aviation Safety Policy Board".

Notwithstanding the management dominance of the Committee, it recognized some basic facts and truisms that have escaped the attention of the FAA for decades and the Committee is congratulated for its perception in these important matters. Pertinent excerpts follow:

> "In addition to organizational structure, the committee identified a number of other factors that may contribute to the FAA's present inadequate level of technical currency and competence:
>
> * Inadequate and ambiguous direction, supervision, and support of staff, resulting in confusion about priorities, reluctance to assert governmental prerogatives, and *low morale*. (Italics supplied)
>
> * Cumbersome Civil Service and personnel regulations and artificial career barriers that have, for instance, blocked adequate advancement and recognition of nonsupervisory technical specialists.

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- Lack of a stimulating atmosphere and peer association, which is essential for a thriving technical organization.
- Lack of resources and incentives for continuing education of technical personnel as well as a systemwide failure to provide adequate opportunities for essential training in new areas of aviation technology.
- Competition in the allocating of new positions from operational components of the agency, such as air traffic control."

Low morale is mentioned specifically in the Committee's first observation, but all of these factors are major contributors of employee unrest.

To provide you with an insight as to FAA's view on morale in the Flight Service System, herewith follows a quotation from the Senate Appropriation Hearings for Fiscal Year 1981:

> "Senator Bayh: Do you have any morale problems in the flight service system? If so, please identify and expand. If so, what is your recommended solution?
>
> Mr. Sharp: We have had a morale problem in the flight service system over the past few years which can be attributed to obsolete equipment, poor working conditions (at some locations), increased demand for services, and uncertainty about the future configuration of the system. These problems have for the most part been alleviated through improvement programs designed to make the system more effective and responsive to the increasing demand for services. These improvement programs, coupled with the Flight Service Station Modernization program, will result in a more efficient flight service station system."

Please note that FAA Witness Sharp refers to the low morale problem in the past tense as if the problem had been solved when, in fact, the modernization program has not even begun.

Material things are important to high morale but they are not essential. Not recognized by FAA Witness Sharp, and far more important, are the factors set forth (and previously listed in this testimony) by the National Academy of Sciences Committee, plus the following:

Discrimination in pay -
(GAO Report FPCD-79-52 July 25, 1979)

Shortage of Air Traffic Control Specialists positions to handle increased demand -
(Senate Report 96-377)

Unequal treatment of personnel in the same personnel category -
(House Report 96-726, Part 1)
(House Report 96-726, Part 2)
(House Report 96-1193)

The report by the Comptroller General of the United States, "How to Improve the Federal Aviation Administration's Ability to Deal with Safety Hazards", suggests trauma and turmoil within the FAA which have not been previously known to this Association in this detail. These allegations, even if only partly true, explain many of the difficulties this Association has had in dealing with the FAA both on a current basis and in the past.

Hazard identification is a case in point. The FAA has been working on the Flight Service Modernization program for about two decades and the program will not reach fruition until 1985 or later. But it was not the FAA who identified the existing Flight Service System as a hazard. It was the Congress of the United States. It was this Subcommittee which held hearings on Congressman Hammerschmidt's Bill H.R. 7699 in the 95th Congress.

This Bill was co-sponsored by seventy-five members of the House and it was you who scheduled and held the hearings, Mr. Chairman. At that hearing the FAA was forced to take action and the FAA witness promised to do so. In this case it required the highest level of government to cause the FAA to get into the hazard identification business. I'm surprised that the General Accounting Office failed to cite this as the worst case example.

One only needs to review the chart on page 3 of the Comptroller General's report and note the high fatalities in general aviation (the third worst of all categories) to conclude that something should be done.

It appears to this Association that in the matter of "Human Factors" the FAA proceeds in a "hit or miss" manner. For example, the FAA contracted with Boston University for an expensive, long term study of human factors relative to air traffic controllers, but failed to specify that air traffic control specialists (station) be included in the study. Accordingly, the end product was only a half a loaf!

In view of the actions of the House Post Office and Civil Service Committee and the Appropriations Committee, such information as the Boston University study might have provided is urgently needed at this time, but is not available.

To update the Committee on this matter herewith follows a chronology of events:

December 20, 1979 - House Post Office and Civil Service Committee reported H.R. 1262 favorably (House Report 96-726, Part 1).

February 21, 1980 - House Appropriations Committee reported H.R. 1262 adversely (House Report 96-726, Part 2) but with recommendation quoted as follows:

> "The Committee is cognizant of the potential for detrimental effect on employee morale resulting from the exclusion of flight service station specialists from programs such as those authorized by Public Law 92-297. The committee intends, therefore, to recommend a further review of this problem and its impact on aviation safety. The committee believes that this further study is necessary before a decision is made with respect to inclusion of flight service station personnel in this program."

July 24, 1980 - Appropriations Committee directs further review and report (House Report 96-1193) quoted below:

> "Under Public Law 92-297 air traffic controllers can qualify for an early retirement program, but flight service station specialists are not entitled to similar benefits. In part 2 of the report on H.R. 1262, the Committee recommended a further review of this situation. This Committee reiterates this recommendation and directs the FAA, in cooperation with an independent organization, to report on this matter no later than September 30, 1981."

We are hopeful of course that the FAA will indeed proceed in this matter in an objective way, in cooperation with an independent organization, and lay aside their bias of the past. In the interest of aviation safety we are hopeful, Mr. Chairman, that you and your Committee will monitor the progress of this project.

And finally Mr. Chairman and Members, under human factors, this Association has been negotiating with the FAA for a Contract for almost two years (two years September 26, 1980) and the end is not even in sight. The FAA has used every delaying tactic known with their very large staff pitted against our very small one.

We believe that the delay is unreasonable and capricious. It certainly is at the very least, another contributor to low morale amongst our membership and yet another deterent to aviation safety.

Thank you.

Mr. **Anderson**. Please proceed.

TESTIMONY OF LAWRENCE C. CUSHING, PRESIDENT, NATIONAL ASSOCIATION OF AIR TRAFFIC SPECIALISTS, ACCOMPANIED BY EDWARD L. HUIE

Mr. **Cushing**. Mr. Chairman, I do appreciate the opportunity to appear before you and to testify on the important subject before this committee.

I am accompanied by Ed Huie, our congressional liaison.

On December 6, 1979, we appeared before you on the safety of the air traffic control system, and we are indeed heartened by the fact that you have already initiated action on one of our recommendations relative to prohibitions of flight service station closures.

H.R. 351, H.R. 6771, and H.R. 7850 collectively, in one approach or another, seek to change the FAA's charter, mission, organization or to locate the administration in some other area of the executive branch. Removing the FAA from the Department of Transportation may have beneficial effects in some details of aviation safety, but denying aviation safety the benefits of representation by an official of cabinet rank appears to this association to place in jeopardy all major safety programs. It is believed that cabinet rank representation transcends advantages which may be afforded by independent agency status.

Since this entire matter is under study, another avenue would be to create an Assistant Secretary of Transportation for Aviation to replace the FAA Administrator. At the same time, a review of the FAA regions with the objective of eliminating or consolidation of regions would be most proper. Personnel savings thus achieved would be available for the retained regional headquarters, if any, and for an expanded staff of the assistant secretary. This action would eliminate current duplication in regional headquarters, eliminate inconsistencies in policy, and result in greater efficiency, all to the benefit of aviation safety.

The report "Improving Aircraft Safety," published by the National Academy of Sciences, while limited in scope, contains some facts and interesting observations which are worthy of comment.

First is the composition of the 13-member committee. Four of the members are from academia, seven are from industry or private enterprise, one is from Government, and the last is a lawyer. Of the 13 members, 5 are labeled with the adjective former or retired. While the academy claims appropriate balance and perhaps it is from their point of view, we would be far more comfortable with the findings if the committee had had appropriate representation from labor.

For example, the committee states, "With the exception of the flight crew, no group has a greater effect on aircraft safety than the maintenance workers at the airlines." Both of these groups are part of the labor force and the committee states that they stand in front of all other groups in their effect on aviation safety. It seems to us that labor representation on the committee would have been vital in developing study scenarios on personnel groups as important as these.

Similarly, the committee omits labor representation in its speculation relative to the composition of its proposed Senior Technical Advisory Committee and its proposed Aviation Safety Policy Board.

Nothwithstanding the management dominance of the committee, it recognized some basic facts and truisms that have escaped the attention of the FAA for decades, and the committee is congratulated for its perception in these important matters. Some excerpts follow:

> In addition to organizational structure, the committee identified a number of other factors that may contribute to the FAA's present inadequate level of technical currency and competence:
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> Inadequate and ambiguous direction, supervision, and support of staff, resulting in confusion about priorities, reluctance to assert governmental prerogatives, and low morale.
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> Lack of resources and incentives for continuing education of technical personnel.
>
> Competition in the allocating of new positions from operational components of the agency, such as air traffic control.

Low morale is mentioned specifically in the committee's first observation, but all of these factors are major contributors of employee unrest.

To provide you with an insight as to FAA's view on morale in the flight service system, which is a part of the air traffic control system, there follows a quotation from the Senate Appropriations hearings for fiscal year 1981:

> Senator BAYH. Do you have any morale problems in the flight service system? If so, please identify and expand. If so, what is your recommended solution?

In the response of the FAA, they indicated that they had had a morale problem, the indication clearly being that that had been resolved, which is not correct.

Please note that FAA Witness Sharp refers to the low morale in the past tense when in fact the modernization program which he referred to has not even begun.

Material things are important to high morale, but they are not essential. Not recognized by FAA Witness Sharp, and far more important, are the factors set forth—and previously listed in this testimony—by the National Academy of Sciences committee plus the following: discrimination in pay; shortage of air traffic control specialist positions to handle increased demand; unequal treatment of personnel in the same personnel category.

The report by the Comptroller General of the United States, "How to Improve the Federal Aviation Administration's Ability to Deal with Safety Hazards," suggests trauma and turmoil within the FAA which have not been previously known to this association in this detail. These allegations, even if only partly true, explain many of the difficulties this association has had in dealing with the FAA both on a current basis and in the past.

Hazard identification is a case in point. The FAA has been working on the flight service modernization program for about two decades, and the program will not reach fruition until 1985 or later. But it was not the FAA who identified the existing flight service system as a hazard. It was the Congress of the United

States. It was this subcommittee which held hearings on Congressman Hammerschmidt's bill, H.R. 7699, in the 95th Congress. His bill was cosponsored by 75 Members of the House, and it was you who scheduled and held hearings, Mr. Chairman.

In this case it required the highest level of Government to cause the FAA to get into the hazard identification business.

One only needs to review the chart on page 3 of the Comptroller General's report and note the high fatalities in general aviation, the third worst of all categories, to conclude that something should be done.

It appears to this association that in the matter of human factors the FAA proceeds in a hit-or-miss manner. For example, the FAA contracted with Boston University for an expensive, long-term study of human factors relative to air traffic controllers but failed to specify that air traffic control specialists at flight service stations be included in the study. Accordingly, at great cost, the end product was only half a loaf.

In view of the actions of the House Post Office and Civil Service Committee and the Appropriations Committee, such information as the Boston University study might have provided is urgently needed at this time but is not available.

A chronology of events follows. I am not going to bother to read that entire thing, but it is very interesting to read.

We are hopeful that the FAA will proceed in this matter in an objective way. In the interest of aviation safety we are hopeful, Mr. Chairman, that you and your committee will monitor the progress of this project.

Finally, under human factors, this association has been negotiating with the FAA for a contract for the employees at flight service stations for almost 2 years. The end is not yet in sight. The FAA has used every delaying tactic known with their very large staff pitted against our very small one.

We believe that the delay is unreasonable and capricious. It certainly is, at the very least, another contributor to low morale amongst our membership and yet another deterrent to aviation safety.

I would like to express at this time support of H.R. 7611 introduced by Mr. Goldwater. This bill seeks to remove the ADAP trust fund out of the unified budget and accordingly make these funds available to aviation safety rather than for manipulation by the administration in its budget-balancing act.

That concludes my remarks, Mr. Chairman. I will be glad to answer any questions.

Mr. ANDERSON. Thank you, Mr. Cushing.

In your testimony you indicate that you believe that the legislative proposals before the committee to reorganize the FAA probably will work if pursued with diligence, as is the case with the present organization.

Do I gather from this statement that you do not think that reorganization would go to the heart of the problem?

Mr. CUSHING. I think that reorganization, if it were carried forth, probably would. But I think the point I was trying to make was again in its present configuration they are going to have to need a watchdog such as this committee to make sure they proceed.

Mr. **Anderson**. In your testimony you suggest a review of the FAA regions with the objective of elimination or consolidation of regions. You state that this would improve efficiency and eliminate inconsistencies and duplication. Can you elaborate on some of the inconsistencies and duplication that would be eliminated and the efficiency that would be achieved? Would safety be enhanced?

Mr. **Cushing**. Yes. I believe I can answer that question.

The agency in promulgating its rules and putting them out prepare a rule at the headquarters level which is then put out generally in very broad category to eleven different regions. The regions themselves are left to interpret exactly what the regulation means. They are left to their own devices in many cases as to how they will implement. Consequently, on almost any given subject, you can have a single rule that results in eleven different methods of interpretation and in handling.

Mr. **Anderson**. You indicate that your organization has been negotiating with the FAA for a contract for 2 years. What improvement in your members' job situation are you trying to obtain through a contract?

Mr. **Cushing**. Some of the things that we are after is, strangely enough, educational benefits, that is, training benefits. While the agency is charged with the responsibility for adequately training the air traffic controllers in the flight service option, they have been very, very niggardly; and they have been very lax in responding to that responsibility. Consequently, we want improved language in the contract that guarantees, strictly in the interest of aviation safety, that our members receive adequate training in all aspects of air traffic control work.

That is just a single example, but there are many, many others.

One of the most important facts is the fact that we have been negotiating for 2 years. If we were willing to act as some others do—for instance, if we wanted to conduct a slowdown or strike, there is not much question that we could achieve a little greater speed in the negotiating field. But our membership does not even contemplate such action. Consequently, we are disadvantaged by the FAA's attitude: if you don't bite us, then we don't respond.

Mr. **Anderson**. I was of the impression that you have training, and that you receive continuous training. Is it that you do not get enough, or it is inadequate, or it is not the right kind? And what happens when you ask for it?

Mr. **Cushing**. Mr. Chairman, up until we negotiated our 1976 contract, the amount of training provided to FAA specialists was of the variety that when you don't have anything to do, sit in the corner and read this book; period.

We did have language in the 1976 contract that mandated training. The FAA has almost totally reneged on the contractual obligation; although we have had some training, it is still inadequate. In this particular contract, the FAA has now contested the negotiability of training in labor contract.

The answer is, before 1976 training was almost always of the self-study variety. You came to work. You went through the academy to get a very brief basic training. All training beyond that was accomplished in the facility and almost always on a self-study basis.

Mr. **Anderson**. Your testimony indicates that you think the blue ribbon panel should have had fewer members who were labeled with the adjective former or retired. Is your objection to the age of the panel members or to their former associations?

Mr. **Cushing**. I think probably a little bit of both. I think that does not really address the main point that I was trying to get across. That is that people should be represented on that panel. There are no people representatives on it in its present makeup. While the panel is made up of people, there are no people representatives. The only way you will get that would be to have labor represented, and labor is not represented. Every safety feature that is incorporated into the air traffic system or any other system, the final end product is handled and run by the people that make the system go. That is the workman. In our case it is air traffic control specialists. In another case, it might be somebody else.

Mr. **Anderson**. Mr. Fary?

Mr. **Fary**. No questions, Mr. Chairman.

Mr. **Anderson**. Thank you very much, Mr. Cushing, for your excellent presentation.

Mr. **Cushing**. Thank you, sir.

Mr. **Anderson**. Our next witness is John H. Winant of the National Business Aircraft Association, Inc.

TESTIMONY OF JOHN H. WINANT, PRESIDENT, NATIONAL BUSINESS AIRCRAFT ASSOCIATION, INC., ACCOMPANIED BY FRED B. McINTOSH

Mr. **Winant**. Mr. Chairman, we do not bring to you anything by way of thoughts which I can honestly describe as being unique. But we will corroborate some of the more important things that have been said to you, and I think there may be an importance to you in knowing that.

We do not urge passage of any of the several bills under consideration.

Tragedies of the very recent past, notably one involving an inflight collision over San Diego in late 1978 and another the crash of a DC-10 at Chicago in May of 1979, have once again focused attention on the adequacies of Federal aviation safety programs.

NBAA can fully appreciate and share many of the concerns that have caused members of Congress to consider these proposed major overhauls of Federal involvement in aviation matters. We, too, have become frustrated with seemingly unnecessary delays in installation of needed navigational and communication equipments, unnecessary congestion in certain airspace, and restrictive regulatory policies that seem to be more concerned with constraining aviation growth than with encouraging growth in system capacity.

Some of our frustrations cannot, however, legitimately be laid at the doorstep of the Federal Aviation Administration. The Federal management process which encourages the building of a huge surplus in the Aviation Trust Fund and then uses that fund as a hostage to a balanced Federal budget is principally to blame for failure of system capacity to keep pace with demands placed on the system.

While it is not subject to today's hearing, H.R. 7611, introduced by Mr. Goldwater, merits brief comment. That bill would release the trust fund from budgetary legerdemain, and we strongly support that goal.

NBAA has felt for many years that Federal responsibility for safety and for promotion of aviation is best handled in one agency. The necessary interplay of requirements, development of hardware, and traffic control must be coordinated within a single agency. The congressional wisdom that created the FAA in 1958 appears to us to be justified in 1980.

We respectfully suggest that the proposals under discussion today should not be subjected to final consideration without the kinds of thorough and comprehensive reviews that went into the passage of the Aviation Act of 1958 or the creation of the Department of Transportation in 1966.

The findings of the blue ribbon panel created early this year by Secretary Goldschmidt headed by Dr. George M. Low, when viewed in conjunction with the February General Accounting Office report, appear to NBAA to provide essential guidance for congressional oversight of the existing FAA organization.

The Low report culminated an extensive review of institutional questions and concepts which stemmed from the Chicago DC-10 crash. Its principal findings are not at odds with those in the GAO report on FAA's stewardship in the safety area.

The Low report concludes, in essence, that improvements rather than new directions are what is needed in the large aircraft certification process. The report tells us that the panel's recommendations aim at making a very good system even better.

We share that view; and, in NBAA's estimation, the view properly extends to the entire mission of enhancing aviation safety.

In summary, NBAA feels that changing the name of the appropriate Federal agency or further dividing its responsibilities are not appropriate actions, at least at this time.

Thank you, Mr. Chairman, for the invitation to share our thoughts with you today.

Mr. ANDERSON. Thank you, John, for your presentation.

Mr. WINANT. Mr. Chairman, I should have introduced at the very outset Mr. Fred B. McIntosh, NBAA's director of operational services, who is with me here at the table. I apologize to you and to him for not so doing.

Mr. ANDERSON. Mr. McIntosh, we are very happy to have you here.

Mr. MCINTOSH. Thank you, sir.

Mr. ANDERSON. Is your association satisfied with the current procedures for regulating the design, manufacture, and maintenance of the aircraft operated by your member companies?

Mr. WINANT. Yes, sir. We are fully satisfied.

Mr. ANDERSON. You comment on unnecessary delays in the installation of needed navigational equipment. Is the problem here a lack of available funding? If so, do you think the situation would be improved if FAA was made an independent agency rather than part of the DOT?

Mr. WINANT. In answer to the first part of the question, we do not think that the delays encountered in installing needed equipment are the result of lack of funding. We feel they are more the result of the whole process which has resulted in an extremely large surplus in the aviation trust fund. That surplus is inordinate.

Whether or not the moneys needed to enhance capacity and efficiency through new equipments would better be obtained through an independent agency, to me, is a very dubious situation. I do not feel at all assured that a totally independent FAA would be able to get more money for more projects than the FAA which is now part of the DOT.

Mr. ANDERSON. You refer to unnecessary congestion in certain airspace. Could you describe the situation you have in mind and indicate what changes you would recommend?

Mr. WINANT. Yes, sir. We feel that one of the concomitants of the deregulatory process has been, obviously, to concentrate traffic in those routes which are more popular with the flying public. This has resulted in the situation whereby we do indeed have congestion at at least three or four major airports. In the last year or so, Denver has been a prime example. The New York area has been a prime example. Los Angeles has been an example.

We, in concert with other elements of the aviation community, have been doing our best to direct moneys toward reliever airports in those congested regions. I would have to confess that we have not been very successful to date, mostly because of the funding process that was the subject of your first question; but we are going to keep trying. We feel that congestion such as exists today will continue to grow and that the obvious relief lies first in improving the primary-air-carrier-served airports to the degree that they can be improved on the real estate they occupy, and secondly to create and upgrade a good reliever system in major hub areas.

Mr. ANDERSON. The GAO report criticized the FAA for not doing sufficient planning and establishing of priorities. Has this been a problem in the areas with which your association is concerned?

Mr. WINANT. I would ask Mr. McIntosh to answer that. He is closer to that subject than I am, sir.

Mr. MCINTOSH. Yes, it has been a problem, Mr. Chairman, to the extent that the FAA's total resources sometimes are scattered, the lack of first a plan and, secondly, the establishment of the priorities within that plan which I think Mr. Bond agreed to in his testimony earlier.

We find this in safety matters, but we find it particularly in F. & E. equipment. You asked a moment ago about congestion. One of our problems rests in the lack of decision by the FAA to install certain equipments. The new community MLS is a good example, where the safety record of non-ILS-equipped airports in the general aviation area continues to be, shall we say, less than adequate. Then you add the procurement time that Mr. Bond described to you, and you can see where a change of priorities or a change of impact in that 5 to 7 years throws the whole thing completely out of adjustment.

Mr. ANDERSON. In your testimony you cite the enactment of the Federal Aviation Act of 1958 in which a single agency, the FAA, was given responsibility for all aspects of safety, both regulatory and operational. Are you familiar with the situation before 1958, when the CAB regulated safety and the FAA's predecessor had the operational responsibilities? What problems were created by this split in authority?

Mr. **Winant**. I, frankly, sir, was not intimately familiar with the system as it existed through the 1950's. Mr. McIntosh might care to comment on that. I do not think that I have sufficient upfront personal knowledge to be able to comment on your question, sir.

Mr. **McIntosh**. Nor I either; I was wearing a blue suit and flying for the Air Force then.

Mr. **Anderson**. Mr. Fary?

Mr. **Fary**. I have no questions, Mr. Chairman.

Mr. **Anderson**. Thank you again very much. I appreciate your being here.

Mr. **Winant**. Thank you, Mr. Chairman. It is good to be here again, sir.

Mr. **Anderson**. Our next witness is Tulinda Deegan, president, Alaska Air Carriers Association.

TESTIMONY OF TULINDA DEEGAN, PRESIDENT, ALASKA AIR CARRIERS ASSOCIATION

Ms. **Deegan**. Thank you, Mr. Chairman. I am pleased to present the views of the Alaska Air Carriers Association on the proposals before this committee to enhance the safety mission of the Federal Aviation Administration.

The Alaska Air Carriers Association was formed in 1974 and represents air carriers in the State of Alaska both passenger, cargo, and mail transportation. The membership includes the certificated air carriers, commuters, and air taxis. The key purpose of the association is to foster and promote an environment that ensures safe air transportation in the State of Alaska.

As you are well aware from testimony before this committee at other hearings, the transportation needs of the State of Alaska are substantially different from the rest of the country. In Alaska, air is the most common mode of transportation. There are very few roads throughout the State connecting communities. In many instances, there are long distances that separate communities. Everything that is needed to survive, food, clothing, and consumer products, must be flown in.

In addition to this lack of roadways, there are severe weather conditions within the State of Alaska that present more operational, maintenance, and training problems for the Alaska air carriers than carriers in the lower 48. As a result, Alaska operators have unique needs and safety problems which require attention and assistance of the Federal Aviation Administration.

As you are well aware, aviation, compared to other modes of transportation, does indeed have an excellent safety record. The FAA has been instrumental in achieving this record. However, a critical evaluation of this agency is one of the best ways to insure that this excellent safety record is continued.

The studies performed by the General Accounting Office, the recently released report of the National Research Council of the National Academy of Sciences, and the hearings of this committee have all pointed out some areas where improvements may be needed to enable the FAA to respond quickly and effectively to aviation safety problems.

The FAA's regulatory, surveillance, and enforcement activities, as well as the activities of the individual air carriers all contribute to the level of safety in the airline industry.

While the Alaska Air Carriers Association supports efforts of the FAA in promoting air safety in the State of Alaska, we do find there are several areas that need improvement.

The first one is improving the weather reporting facilities.

In Alaska, there is a critical need for reliable and effective weather reporting service. Unfortunately, there exists serious weaknesses in the evaluation and reporting of weather in the State. Weather reporting and the number of available weather stations is currently in a state of decline. Very little weather information is available to pilots except in the immediate vicinity of an active manner airport.

The second point is the improved airport facilities.

Airport facilities in Alaska need improvements such as runway edge lights, visual approach slope indicators and runway end identifier lights. It seems that Alaska is, shall we say, at the end of the pipeline for receiving the necessary airport improvements. The members of the Alaska Air Carriers Association are currently evaluating the needs of their airports in Alaska and will present this analysis to the committee and to the Federal Aviation Administration.

The third area is modern and effective air traffic control aids.

The FAA operates only three radar installations in the State of Alaska: one at Anchorage, one at Fairbanks, and one at Prudeau Bay. The first two have an operating radius of 150 miles; the last one at Prudeau Bay has a 200-mile range. All of the equipment is older equipment used as backup in the lower 48.

In addition to radar, Alaska needs better en route and terminal navigational aids. There are cases where there is no navigation aid for over 400 miles. Aircraft crews must rely on the instruments aboard the aircraft for safe flight. The FAA has authorized nighttime VFR flights in most of Alaska. This means that a pilot must rely again on the aircraft instruments, since there are no lighted ground guidelines such as highways, railroads or cities. It is conceivable that a pilot could leave the lights of an Alaskan city and fly into dense fog and never know it.

The next area is better training of FAA personnel.

The FAA personnel need to be continuously trained to understand Alaska's unusual operating conditions in order to better advise the air carriers on ways to improve air safety in their operations.

Air carriers are one of the most important sources, as is pointed out in the GAO study, of information on the airworthiness and reliability of aircraft. The reports prepared by the air carriers must be collected and analyzed by the FAA. The carriers are anxious to take all actions that are necessary to improve safety, but we do definitely need educated guidance from the Federal Aviation Administration.

Finally; as you have heard testimony in the past, regulations proposed by the FAA must recognize Alaska as being different than the lower 48. Specifically, there are two proposals that concern us.

One is the anti-hijacking and security rules recently proposed and also the flight duty times. Both of these rules fail to address the problems of the Alaska air carriers.

Mr. Chairman, you are aware of the proposed regulations dealing with airport and aircraft security. With respect to the State of Alaska, these regulations will have a broad impact due to the large number of small airports and air carriers that would come under the proposed security regulations.

There is a list of approximately 225 additional airports in Alaska which was prepared by the State of Alaska Department of Transportation of the cities that will need additional security programs. Among the unworkable provisions of the proposal is the requirement for the presence of a law enforcement officer. Indeed, many of these communities do not have a law enforcement officer residing in the community to go out to the airport.

Clearly, the FAA has overstepped its authority in extending the security program to the Alaskan carriers while neglecting the critical safety needs of Alaska. We believe that, if Alaskans are going to achieve any substantial reduction in the overall impact of these rules, we will need the help of Congress. The only satisfactory solution for Alaska is to preserve the status quo. The FAA should eliminate all references to Alaska in the final rule on airport and airway security.

The Alaska Air Carriers Association is currently reviewing the FAA's proposed rules on the flight and duty times. I have a summary attached at the end of my testimony.

One point that we do have to make is that we feel the FAA has been short in the time to comment on such an extensive proposal. We would like to see the time for proposal extended.

Mr. Chairman, the Alaska Air Carriers Association supports the efforts of this committee to evaluate ways to enhance the safety mission of the Federal Aviation Administration and believes that the airing of these proposals in this hearing forum will help to ensure the continuation of the excellent safety record in air transportation.

That concludes my remarks.

Mr. **Anderson**. Thank you, Tulinda. In your testimony you suggest that Alaska's needs for air safety are not being satisfied. Do you feel that Alaska is being treated less favorably than other States? Or do you believe that Alaska has special needs and requires different treatment from other States?

Ms. **Deegan**. I would have to assume the latter. There are special needs that require special training of the FAA personnel and of the regulations to adapt to the different environment of Alaska.

Mr. **Anderson**. Do you believe that the legislation before the committee would be likely to lead to better performance by the FAA in satisfying Alaska's air safety needs?

Ms. **Deegan**. I believe that the proposals before the committee each have some very good aspects to them. As I said in my testimony, airing of these proposals here and getting the feedback of the industry will certainly help promote better safety enforcement and mission of the FAA; yes, indeed.

Mr. **Anderson**. Is there a special FAA office in Alaska? Does this office attempt to represent Alaska's special needs to headquarters in Washington? If so, do they do an effective job?

Ms. **Deegan**. There is a special FAA office in Alaska.

Mr. **Anderson**. Where is that?

Ms. **Deegan**. It is located in Anchorage.

I do not really know how effectively they represent the interests of Alaska here in Washington, as I have just joined them and have not really had any direct experience with them right now. But, if I do find any areas where there is some concern, I will bring it to your attention.

Mr. **Anderson**. In your testimony you comment that FAA personnel need continuous training in understanding Alaska's unusual operating conditions.

Is your opinion that the FAA is failing to give this training? Should the training be conducted by the agency itself or by some other group?

Ms. **Deegan**. The problem with training in Alaska is twofold. One is the turnover of the personnel within the State. The second one is the training for the specific needs of the air carriers.

Training should be done by the FAA itself in addition to using any other available sources. One source that the Alaska Air Carriers are in the process of developing is the Alaska Air Safety Foundation, which will be a training foundation for both the airlines and, hopefully, the FAA personnel to work together in training each other and jointly so that we can both work a little more effectively in promoting safety.

Mr. **Anderson**. What is the safety record for common carrier air operations in Alaska? How does it compare to the record for operations in the 48 States?

Ms. **Deegan**. Right now I have not seen any special analysis of the Alaskan safety record in air transportation. I understand that the National Transportation Safety Board is currently under way in investigating the safety record in Alaska and should be issuing a report over the next year or so which will give you an analysis of safety in Alaska versus the lower 48. But right now I do not have that data available.

Mr. **Anderson**. Mr. Fary?

Mr. **Fary**. I have no questions, Mr. Chairman.

Mr. **Anderson**. Thank you, Tulinda, for an excellent presentation.

What are the commuters going to do?

Ms. **Deegan**. My replacement has been selected. It is Steve Smith. He will be testifying next time around.

Thank you very much, Mr. Chairman.

Mr. **Anderson**. Our final witness is Ed Stimpson, president, General Aviation Manufacturers Association.

Mr. Stimpson, the full text of your prepared statement will appear in the record at this point.

[The statement referred to follows:]

STATEMENT OF EDWARD W. STIMPSON, PRESIDENT, GENERAL AVIATION MANUFACTURERS ASSOCIATION

We appreciate the opportunity to comment on the various bills and proposals before the committee designed to enhance the safety mission of the Federal Aviation Administration. Generally, these proposals fall in three broad categories:

1. The removal of the FAA from the Department of Transportation and the creation of a new independent agency (HR 451) or new agencies (HR 7850).
2. The removal of "promotional activities" from the FAA (HR 6771).
3. Implement actions to strengthen the operation of the FAA, as recommended by the National Research Council and the Controller General's Report of last February.

Overall, the FAA has done an excellent job in designing, building, operating and maintaining the nation's airport and airway system. They have been most diligent in establishing the safety regulatory basis for the aircraft and airmen who operate in the system. As an industry highly regulated by FAA, we have had our differences. However, in the long term, the FAA built the system that has provided the highest level of safety for the traveling public in the world. It has also provided a regulatory environment in which both the air carriers and general aviation have grown.

The question has been raised as to whether the FAA can be both a promoter and a regulator of aviation safety. From a national point of view, the safety of aviation is its promotion. These functions are inextricably linked and have been so since the government first got involved in civil aviation almost 60 years ago. A safe air transportation system is the best promoter that could exist and aviation will not grow, if it is not perceived to be safe.

Perhaps there are some areas where FAA activity could be perceived as strictly promotional. There are relatively few such areas. The international area where FAA works with foreign governments and provides valuable technical guidance and assistance is an example. This assistance is in the form of engineering expertise on airports, airways, regulations and certification. Another example of the vital role played by FAA in promotion is the general aviation accident prevention program. This program, which is a joint government/industry effort, attracted nearly 400,000 pilots last year. These examples, which might be called promotional in nature, but have definite safety implications, are viewed as positive contributions.

The proposed legislation suggests that FAA could perform its function best as an independent agency. History has provided us an opportunity to evaluate this.

Under the various umbrellas, whether it was in the Department of Commerce (1926–1957), as an independent agency (1958–1966), or in the Department of Transportation (1966–present), safety has been served and continues to be improved. A close analysis reflects clearly that the Congress has been supportive of FAA and its predecessor agencies safety mission.

In fact, when the Congress established the Department of Transportation, special language was included in legislation to maintain the identity of the FAA in the safety area and the status of the Administrator.

It is regrettable that FAA has not been able to fully do the job that Congress has charged it to do. For example, one of the very basic problems facing aviation is increased capacity and safety of the airport/airway system. The need in this regard is well spelled out. Just last week, the FAA released its latest airport system plan which showed needs for the coming decade to be $1.2 billion, a 20 percent jump from predictions made just two years ago. Yet, appropriations from the $3.7 billion trust fund surplus continue to fall woefully short of the needs.

Such steps as HR 7611, which takes the airport/airway trust fund out of the unified budget process, should be taken. Until this is done, it really doesn't matter whether FAA is in the DOT or is an independent agency.

A number of positive suggestions have been made for improving air safety. Many of these are contained in the excellent recent report of the National Research Council of the National Academy of Science which reviewed the FAA certification process. Specifically, the report stresses the need for a central engineering organization staffed with technical personnel of the highest calibre. In addition, it suggests the formation of certain advisory committees. These recommendations should be strongly supported.

In summary, we believe that an integrated national transportation system policy of which the aviation segment plays a major role is vital to the nation and should best be accomplished within the framework of the DOT. General aviation will continue to play an expanding significant role in the national transportation system.

Air safety is a continuing concern for the Congress, the Executive Branch, the industry, and all of those who benefit from the airport/airway system. However, when changes are made, there should be a high degree of assurance that safety will really be improved by such actions.

Mr. **Anderson**. Please proceed.

TESTIMONY OF EDWARD W. STIMPSON, PRESIDENT, GENERAL AVIATION MANUFACTURERS ASSOCIATION

Mr. **Stimpson**. Mr. Chairman, we basically think the three bills under consideration by your committee are probably premature and unnecessary at this time and do not really solve the basic problems facing air safety today.

A great deal has been made of the so-called promotional role in FAA. If I look at the promotional role and try and break out what the promotional role is, you basically get very few areas. Some may be in international. Some may be in aviation education, maybe the airports. In some areas I think this role should be expanded. For example, in the international area FAA does some excellent work overseas in engineering design, international missions, assisting developing nations on the development of their aviation systems.

As a consequence of some of these activities, as manufacturers of equipment and other things, our people are in there first, helping develop air systems. We are helping provide equipment to them when they buy air traffic control, aircraft, and other things. We would like to see this increased, as a matter of fact. Other nations are doing it and quite successfully.

So, I think, when you look at promotion, when it gets down to the nitty-gritty, there are very few things in which FAA is being promotional. The bottom line is safety. It must be promoted. Safety and promotion are linked very closely together. The safest system we can have is one that has such a closely intertwined connection.

Second, no attention today has been given to the safety amendments that were included in the original DOT Act. I think these amendments are quite significant because at that time Congress was concerned that the Secretary of Transportation would be dictatorial over the Administrator of the FAA on safety. Senator Monroney at that time showed great leadership in putting special amendments into the DOT Act which said that the Secretary of Transportation will not overrule the FAA Administrator on questions of safety.

Another aspect of this was to keep the FAA Administrator as a level 2 position. The original DOT legislation downgraded the FAA Administrator. The Congress was very specific on keeping him at a status within Government which allowed him to do his job.

One of the things I think your committee may want to look at is, has this worked? I think, on balance, it has worked pretty well. The secretary has stayed out of some of the calls on safety except when it comes to the allocation of resources. This gets us back to one of the favorite questions, the Airport Airway Trust Fund.

It really does not matter much whether you have an independent FAA, or whether you have a DOT with the FAA included in it, if resources are not made available to do the job right.

We, of course, have had great discussions here recently over the $3.7 million trust fund surplus. We would strongly support H.R. 7611 before your committee, which would take the trust fund out of the unified budget and allow that money to be spent for the purposes for which it was intended. Lastly, Mr. Chairman, the Low report is an excellent report. It contains many recommendations which I do not think any of us have yet had a chance to assimilate. There are many recommendations in it. We think most of these should be implemented. It is going to take a little time to do that.

In summary, we appreciate the opportunity to appear before you today and would hope that action would not be taken on these bills at this time.

Mr. ANDERSON. Thank you for your presentation. What procedures does the FAA use in the certification of general aviation aircraft? Do company engineers have delegated authority to determine whether the aircraft meets the FAA standards?

Mr. STIMPSON. Yes. We certify aircraft under both part 25 and part 23 of the Federal air regulations. In the cases of part 25—the air transport category airplanes—some of our companies do use the DER's. In the cases of part 23 aircraft, under which most general aviation aircraft are certified, in a number of cases we do operate under so-called DOA, the delegated option authority, which gives certain people in a company the authority to make certain inspections and signoffs. But I think you must remember that in both these cases the final authority always rests with the FAA.

Mr. ANDERSON. Would you go into a little bit the difference between the DOA and the designated representative that we talk about?

Mr. STIMPSON. Yes. The DOA is the delegated option authority for part 23 type airplanes or aircraft under 12,500 pounds. The procedures are similar in philosophy to a DER, but they are specifically oriented toward part 23 airplanes.

Mr. ANDERSON. What is the difference between a DOA then and a DER except the type of airplane?

Mr. STIMPSON. There is not a great deal of difference. There are certain——

Mr. ANDERSON. It is a company employee——

Mr. STIMPSON. It is still a company employee——

Mr. ANDERSON. [continuing]. Certified by the FAA to represent them——

Mr. STIMPSON. [continuing]. Certified by the FAA. He is operating under part 23 instead of part 25. Instead of building a 747, he may be building a four-passenger Piper Cherokee and signing off. Of course, part 23 is a less demanding certification standard than part 25. In principle, it is the same sort of system.

Mr. ANDERSON. From the standpoint of your association, are there any major deficiencies in FAA's regulation of safety? If so, do you think that the organizational changes proposed in the bills before the committee would help to remedy these deficiencies?

Mr. STIMPSON. No. Basically we think the system is a fairly sound system. I tried to point out in my statement that we do not think it is an organizational problem. We think that it is one of resources in many cases. That is why we would advocate that something be done to allow greater utilization of the trust fund without having it be made a pawn of a unified budget.

From time to time changes should be made. We make suggestions to the FAA as your committee does. I think some of the things in the Low report about upgrading the technical competence of FAA in certain areas are very sound and should be done. Some of the recommendations in the GAO report for cutting down the delays—that is certainly a problem we always have in certain areas of FAA—are very sound and basic.

We now are working with the FAA in certification on the new, so-called lead region concept. FAA is attempting certification by lead regions. The administrator referred to it this morning in answer to Mr. Goldwater. They are moving certification to Seattle for aircraft over 75,000 pounds. In Kansas City they are putting basically all general aviation aircraft as a lead region. Engines will be up in Boston. This concept is one on which we are working with the FAA as they go through their new procedures. So, there are some areas that certainly should be changed. I think the administrator is taking many steps in these areas which are going to be helpful to all.

Mr. Anderson. I am not clear from the discussion in your prepared statement whether you think that the FAA would do a better job in safety if it was an independent agency rather than a part of DOT. Could you clarify your position on this point?

Mr. Stimpson. I think it is a close call, having looked at the job that FAA did as an independent agency. It certainly was an outstanding job, and it is continuing to do a good job. I do not think the problem is as much whether it is in or out of the DOT as to whether it has the resources to do the job right. At this moment I do not think the evidence is such that it demands that the FAA should be taken out of the DOT again.

We have been through this once before. I do not think you necessarily turn the clock back. So, I would not recommend that at this time.

Mr. Anderson. General aviation has a higher accident rate than the commercial aircraft. Do you think that this is inevitable? Or do you think that general aviation's record could be improved? What measures would bring about an improvement?

Mr. Stimpson. I think the record can be improved, Mr. Chairman. As you know, last year we had our best accident record in a number of years in general aviation. Unfortunately, it has increased a little so far this year. Hopefully, it will go back down again shortly. I think there are a number of steps that can be taken to improve general aviation safety. For example, we are actively engaged with the FAA in a safety prevention program. We put on clinics and seminars around the country to get pilots to come out on weekends and nights for educational reviews and seminars. We are also involved with FAA on pilot proficiency programs. Pilots go out and upgrade their training. We hope some of these steps will work even further. If they do not, we may have to take other actions. But I think there are a number of opportunities for improving general aviation safety. I think all of us as an industry are working toward this end. We are not happy with the record. I think we will never match the commercial airlines because you are dealing with a highly professional group, the airline pilot. With respect to general aviation, if you look at corporate airline safety, it is excellent—equal to that of the airlines. But, when you put everything in general aviation safety from crop dusting to dope smuggling to the weekend pilot to pipeline control, we have a different ball game.

Mr. **Anderson**. Has your industry found a problem with FAA engineers who deal with general aviation aircraft as was found by the blue ribbon panel for FAA engineers who deal with commercial aircraft manufacture?

Mr. **Stimpson**. Excuse me. I am not sure I understand the question.

Mr. **Anderson**. Do they have the same problems?

Mr. **Stimpson**. Yes, we have some of the same problems. Since we also certify airplanes under part 25, all our business jets are under the same certification standards. We have some of the same problems they do. I do not think they are unique. Sometimes they are not as large; we are building smaller airplanes. Delays are always a problem for us. Changes in the regulations, things of this sort—Special conditions which may come up.

Mr. **Anderson**. Mr. Fary?

Mr. **Fary**. I have no questions, Mr. Chairman.

Mr. **Anderson**. Thank you very much.

Mr. **Stimpson**. Thank you, Mr. Chairman.

Mr. **Anderson**. We will recess at this time until 10 o'clock tomorrow morning. The subcommittee stands in recess.

[Whereupon, at 5:04 p.m., the committee was recessed.]

TO ENHANCE THE SAFETY MISSION OF THE FAA

THURSDAY, AUGUST 21, 1980

House of Representatives,
Subcommittee on Aviation,
Committee on Public Works and Transportation,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:12 a.m., in room 2167, Rayburn House Office Building, Hon. Glenn M. Anderson (chairman of the subcommittee) presiding.

Mr. Anderson. The meeting of the Subcommittee on Aviation will come to order.

It's going to be a better day today. We start off with our distinguished colleague from California, John Burton.

John, we do have your prepared statement and it will be made a matter of record.

[Statement referred to follows:]

Statement of Representative John L. Burton on the Role of Safety in FAA's Mission

Mr. Chairman, Members of the Subcommittee. As you know, the Subcommittee on Government Activities and Transportation of the Committee on Government Operations, which I chair, has been actively investigating and conducting oversight of the Federal Aviation Administration for some years. In May of this year, we completed a report on FAA's type certification of transport category aircraft. The very first recommendation in that report is that Congress should repeal the portion of FAA's statutory mandate which requires it to promote or foster aviation commerce. The agency should have a clear, unambiguous, and unalloyed mandate to pursue safety. At this time, I would submit that report to the record of this hearing. I specifically direct the Members' attention to the first appendix in the report which gives a detailed explanation of our recommendation on the issue before you today.

The Committee came to the conclusion that this promotional duty of FAA's should be repealed in the course of the investigations into the crash of the DC-10 in Chicago on May 25, 1979, the worst domestic aviation accident in history. The events following that tragedy revealed that the confusion in goals caused by the agent's dual mission intrudes both at times of crisis and in an on-going insidious way.

Right after the accident when the plane was repeatedly grounded over the course of two weeks and public apprehension was highest, FAA went to U.S. District Court and argued that it could not ground the DC-10 fleet because the agency had a duty to promote aviation commerce. The Administrator later disavowed that argument during our hearings, but nevertheless it was advanced during a period of crisis as events overtook the agency.

During our subsequent investigation, we perceived the quiet, insidious affect of this dual mission of commercial promotion and safety regulation. The day to day work of the agency in reviewing reports, making inspections, and investigating incidents frequently is done in a passive, deferential manner. The agency simply is not the aggressive policeman pursuing safety in the industry we have all come to rely on. This perception of the agency has been confirmed by the FAA Administrator as well as the Blue Ribbon Panel of the DOT Secretary.

The statutory problem before you today is not just a question of what duties are delegated from the Secretary of DOT to the FAA. Section 305 of the Federal Aviation Act directing the agency to foster air commerce isn't the basic problem. The airlines spend millions of dollars promoting air travel on their own and don't need Government help. The real legislative problem is the FAA's current statutory statement of aviation policy. That statement in Section 103 of the Act calls for promotion of the industry and is largely unchanged from the days when aviation was a fledgling industry supported by military and mail contracts. And this policy statement is more than mere legislative exhortation. Section 6(c)(1) of the DOT Act of 1966 makes this policy of promotion binding on the FAA regardless of what other duties are delegated from the Secretary to the Administrator.

What is needed as a first step is a new, modernized statutory statement of Federal aviation policy. A revised aviation policy should be explicit and unambiguous in stating that the agency's primary goal is the highest degree of air safety. This committee wisely recognized this as the proper public policy when it revised the policy guidance given to the Civil Aeronautics Board in the Airline Deregulation Act. It is time to complete the work and revise FAA's policy guidance.

Mr. **Anderson**. Please proceed.

TESTIMONY OF HON. JOHN BURTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. **Burton**. Thank you, Mr. Chairman.

We would also submit to you the report that our Committee on Government Operations did concerning the certification of aircraft. In that, we have an appendices that shows the legislative history of the Federal Aviation Administration's duty to promote and foster aviation commerce. I would submit that for your interest, you will really find it was a historic accident that ended up with the FAA involved in this.

We became involved in this thing. The first recommendation coming out of our hearings on the certification process, and the DC-10 crash, was that there was no need for the FAA to have this promotional duty and that it should be repealed.

Right after the accident, when the plane was repeatedly grounded over the course of 2 weeks, and public apprehension was at its highest, the FAA went into district court and argued that it could not ground the DC-10 fleet because the agency had a duty to promote aviation commerce. Now here they are with the prime duty to safeguard the flying public, and on the other hand Langhorne Bond goes into court and made that argument that because they have this additional duty to promote aviation commerce, this caused them trouble.

He later disavowed that argument during our hearings, but nevertheless during the period of crisis, after the crash, they did advance that statement.

During our subsequent investigations we perceived the quiet and insidious effect of this dual mission. The day-to-day work of the agency in reviewing reports, making inspections. investigating incidents, frequently is done in a rather passive, deferential manner. One of the statements that Mr. Bond made in the position papers that they had after the crash of the DC-10 was they were not unmindful of the economic impact on the industry. Certainly there was an economic impact on the industry, but as far as my life is concerned, when I'm flying in an airplane, I would just as soon that the industry worry about the economic impact and not the Federal safety agency.

Also, when we asked specifically—I believe I asked Mr. Bond about this problem of the dual role. He said he really didn't see any problem; in fact, the only thing he can remember doing in promoting aviation commerce was going to the Paris Air Show.

Well, if that's all he does, I think that clearly these two functions ought to be separated. Initially, I was of the opinion that possibly the promotion of aviation should be in the Department of Commerce. Mr. Walker, the ranking Republican said, "Have you ever figured out how many millions of dollars the industry itself spends to promote aviation, and why should the Federal Government in this day and age even be involved in promoting aviation." In the early days of air travel there might have been an excuse for that, but with the full page ads and the TV ads we see every day, I don't think it's worth one taxpayer's dollar to promote aviation commerce.

Now, last, the perception of the agency as we laid it out in our report was confirmed by the FAA Administrator as well as the panel that was set up by the Department of Transportation Secretary. The statutory problem before you today is not just a question of what duties are delegated from the Secretary to the FAA. Section 305 of the Federal Aviation Act directing the agency to foster air commerce isn't the basic problem.

As I say, the airlines spend millions promoting air travel on their own. The real legislative problem is the FAA's current statutory statement of aviation policy. That statement in section 103 of the act calls for promotion of the industry and is largely unchanged from the days when aviation was a fledgling industry supported by military and mail contracts.

This policy statement is more than mere legislative exhortation. Section 6(c)(1) of the DOT Act makes this policy of promotion binding on the FAA regardless of what other duties are delegated.

What I really believe is needed in the first step, is a modernized statutory statement of FAA policy, and the revised policy should explicitly and in unambiguous terms state that the FAA's duty and primary goal is the highest degree of air safety, and it should not be encumbered by this promotion part of the statute.

Again, Mr. Bond will deny that that enters into any of his actions. Yet we saw an argument in court, we saw a statement that he was not unmindful of the economic impact on the industry during the DC-10 crisis, and I think that's a fair statement to be made by somebody else, but not the person whose responsibility should be to see that everyone has the safest possible flight.

Again, just as an aside, we had hearings last weekend where there had been cutbacks in the training of the people—the PASS membership and others—who repair and maintain the computers that have been having such problems. I asked why there was a cutback in travel, and they said well, the Congress—and we did, we put a limit on travel; I think we reduced $500 million on the amount of travel in the Federal Government. I asked a very stupid question. I said, "Why not cut back Langhorne Bond's travel to the Paris Air Show as opposed to cutting back travel for people whose job it is to make sure that those computers in our traffic control centers are safe". No one from the FAA had an answer to that one, and the Administrator, fortunately or unfortunately, wasn't present.

Finally, I would also like to put a small word in, or a big word in, for Barry Goldwater's bill, to take the trust fund out of this joint budget. As you know, we have money in that trust fund. We do need to spend money on up-to-date computerized radars and things of this sort, and to have that money put into a consolidated budget as a means of having paper balances I don't think is fair to the people who pay that tax, because the only people that put money into the trust fund, as you know, are people who utilize the airlines, and that money should be used for that development and for that safety, not for budget balancing purposes.

That unified budget concept, as we all know, came out of Lyndon Johnson during the height of the Vietnam war, when he tried to hide the total costs of that war by putting in highway trust funds, social security trust funds, and aviation trust funds into a unified budget to make it look like more money was being spent on human needs than was being spent on human destruction.

So, with that statement, I would be happy to answer any questions. But we have found that it gives the Administrator a tremendous out any time there is a serious problem, any time a conflict comes between safety of the flying public and the economics of the industry, the FAA comes down on the side of the economics of the industry. They tried to do this as far as taking the liferafts off of planes. They changed certain regulations. There was a tragedy that happened 2 or 3 days ago, where people were consumed by fire. We have been trying to get the FAA to do something about cabin safety and other matters, and again that comes into money and then that comes into promoting aviation commerce and they have to look at both sides of the picture.

I don't think they should. Maybe someone else should look at that side of the picture. You know, the traffic cops aren't looking at anything except safety and people who break the law, and I consider that the FAA should be the policeman of this industry and not the guardians of its economic well-being. I think we took the Government out of the economic well-being of the industry with the deregulation bill. I just see consistent possibilities for buck-passing as long as this dual role exists, and the way that it fits in throughout different parts of the statute, it almost gives them primary responsibility for promotion of commerce as against safety.

But again, Mr. Bond—and we have it as a matter of record, and we'll even try to find it if you would like it for your record—he says the only thing that he does as far as aviation promotion of commerce is go to the Paris Air Show. We could do without that, the Paris Air Show could do without that, and Langhorne Bond could probably do without that.

I would be happy to answer any questions.

Mr. Anderson. Thank you, John, for your presentation.

I know that your committee has been concerned with the FAA's use of the designated engineering representatives in aircraft certification. The blue ribbon panel found that the potential for conflict of interest in the DER's is effectively checked in several ways. The panel cited the DER's professionalism, the stake of the manufacturer in a safe product, supervision of the DER's by the FAA, and reservation by the FAA of authority to make critical decisions. The blue ribbon panel recommended the FAA continue to use DER's to perform the functions now delegated to them.

Now, are these findings and recommendations supported by the investigations of your committee?

Mr. **Burton**. Mr. Chairman, first of all, once you're a DER, I don't even know if they can revoke that designation unless you go off and almost commit a heinous crime.

We have found, first of all, that at the present they would have to rely on the DER; they couldn't find enough people to do the job that they do. But they do not control the DER's. Most of the material, many of the online decisions, are delegated and redelegated to DER's. The FAA never saw a lot of the material on the DC-10 until after the crash. They reserve things for themselves, and then they kick them back to the DER. They do not see all of the material.

You have the DER's working toward a certain focal point from whatever the manufacturing company is, and it all comes from, say Glenn Anderson, and it goes out. But at FAA one thing will come to John Burton and one thing will come to Geri Ferraro and one thing will come to Nick Rahall, one thing will come to John Fary, one thing will come to Mr. Levitas—they don't even have a centralized point in the FAA to receive this.

We found that they do not adequately cover the DER's, that they do not adequately monitor the work that they have done, and that there is a potential for a conflict there.

We all know that the DC-10 was a rush to judgment in order to catch up with the 747 and the L-1011 to get some of the wide-body share. We found in our hearing documents, and the FAA admits, that they don't receive much of the information upon which design decisions are made.

It is just my judgment that at present we still have to use that system, but I think the FAA has got a duty really to monitor and oversee that system. Certainly manufacturers are not in the business of building unsafe airplanes, but if something proper would have been done, a cargo door wouldn't have blown out over Paris; if something was done, they would have tested the improbability of the slats and they would have understood that if that happened on an L-1011 or a 747 that plane still could have flown. But they never ran the test. They never send mere assumptions to the FAA upon which they base their conclusions.

They said it's one in a billion that an engine will fly off and that the hydraulic system that runs the slats will go out at the same time. But they never figured out that maybe the engine pylon flying off might go over backward and cut the slat controls. They didn't send that information to the FAA. This is why I think a stronger oversight by the FAA is needed for the DER's.

I think the DER's serve a function, but they need to have certain corrections. We made a series of recommendations about that. One of the recommendations was that there was no recommendation to totally replace them, because at this point in time we wouldn't be able to do it.

Mr. **Anderson**. Then to answer my question, you are for the DER procedure, but you would differ from the blue ribbon committee where they say there is adequate supervision of the DER's by the FAA; you feel there is not adequate supervision and greater supervision by the FAA is needed over the——

Mr. **Burton**. Well, I don't favor it. I think that's the only game in town right now. I would rather see the FAA do the job. You tell me that somebody working for an airline is going to take their job in their hands and isn't under some kind of subtle conflict of interest, I find that hard to agree with.

Also, the blue ribbon panel, if you read what they said, versus some of their recommendations, their narrative was a little bit harsher than their recommendations.

I didn't quite know we were going to get into the DER's or I would have brought my glasses. I would be happy to go through and give you the weaknesses that we found there. But at the present time I don't think they could get away from the DER system without going out and hiring a potfull of people.

When they tell me the system works perfectly, can somebody tell me why the information doesn't go to the FAA? The FAA delegates too much authority to the DER's. They give them too free of a rein. The DER does not have to submit the assumptions upon which they base some of their analyses. If they would have sent those assumptions on which to base their analysis, there might have been something different that happened on that DC-10. It might have had a cargo door that didn't blow out.

It didn't happen because the FAA admitted to us, No. 1, that they do not get all of the information necessary and they don't even look at the information that they get.

Mr. **Anderson**. Mr. Bond also testified that his own investigation of the DER system had not uncovered any instances in which DER's had made significant errors or deviated from their authority.

Did your committee's investigations reveal any such instances?

Mr. **Burton**. I don't know what a significant error is. A significant error is that they did not properly make the assumption on what would happen if the engine flew off and cut into the hydraulic line controlling the slats. Did they make that assumption? Did they come up with an automatic lock system like the L-1011 and 747? The plane wouldn't have crashed according to experts. So I don't know Mr. Bond's definition of significance.

But again, they delegate so much authority to them that it would be very difficult for them to abuse it.

Mr. **Anderson**. Your committee's investigation, then, did not reveal any such instances?

Mr. **Burton**. Well, what kind of instances? We didn't see anybody fraudulently doing something, but we found a system that was rife with potential conflict, that there was malfeasance, misfeasance, and nonfeasance by the FAA, that they delegated too much authority to the DER's, that they didn't get information from the DER's, and when they got the information, they didn't look at that information.

But, we didn't find the DER's, where they actually went out on their own and took some kind of gamble. We could talk about—and

I'm sure you have read our report—if you read the report, there is reference to the improbability of the slats, a long section there, where they dropped the ball. The fail-safe analysis of the pylon bulkhead was totally inadequate, totally inadequate, by the DER's. They sent that in to the FAA. It's the FAA's responsibility then to catch that and go back. They did not do that.

Mr. **Anderson**. We will have to recess and go answer the vote. Then we'll come back and resume with questions.

Mr. **Burton**. Thank you.

[Whereupon, the subcommittee was in recess.]

Mr. **Anderson**. The meeting of the subcommittee will come to order.

When we recessed, we were in the middle of asking Congressman Burton some questions. I think we had completed the one just asked.

Mr. **Burton**. Well, I think, Mr. Chairman, there really is not that much difference in what the academy was saying and what we were saying. They again fault the FAA for only doing a cursory review of the type of information that they receive from the DER's.

Now, as far as certain designated things are concerned, it didn't deal with the DER's but the DMIR's. The FAA fined Douglas $300,000 for the failure of their activity there.

Our point is that, one, they designate to too great a degree certain things that the DER's can do, and they do not retain control over certain instances. I could read you the findings. They do not retain control, they do not even get control over the failure mode effect analysis. They do not get the assumptions. They do not get what these things were based on.

Even 2 months after the crash of the DC-10, McDonnell Douglas still did not make available or have available at that time the basis for their assertion that it would be an extreme improbability that that type of accident would happen. So the FMEA's aren't submitted to the FAA. They are edited, abstracted, in the fault analysis which goes to the FAA, after they have already been approved or recommended for approval by the DER, some of them with questionable probability findings and some with certain things that, in fact, have been deleted—the cargo door situation, for instance, and the report on the improbability of the uncontained engine failure that could cause slat retraction.

So I think what I'm saying is we are stuck with the system. That inherent in that is the fact that—I mean, he who pays the piper calls the tune. They're working for a company and certainly they would not do anything completely untoward. On the other hand, I do think that provides enough of a potential conflict that the FAA has to keep a very close watch over the situation, and this they do not do.

As I said, FAA admitted that they do not get all of the information from the DER's, and second, which is even worse, what they get they don't look at. So the FAA's weakness in this is not so much that they tend to use DER's, but they just totally rely on DER's. DER's can make a whole series of approvals and then the FAA retains certain final approval, but they will also turn around and redelegate it. In other words, at the lower end of the scale the FAA allows the DER's to further delegate work to other company-paid engineers. The FAA regional order states "the responsibility for finding compliance in delegated functions, marked with an asterisk, may not be redelegated without prior FAA concurrence." In other words, it turns around and lets them redelegate again.

This is all the way through. The recommendations, in my judgment, in the blue ribbon panel's report are kind of wishy-washy. But when you read the subject matter, when you read the narratives, it's as damning as our report. I think what happened, maybe, somebody got ahold of and flaked up some recommendations a bit. But when you go down and read that analysis, it finds the same problems that our subcommittee found. I just believe that the FAA does a stinking, rotten, lousy job, and I just have to say it. They are not candid and forthcoming. I don't know how they are with your committee. I know with our committee they are not.

They have made statements that they have followed 87 percent of NTSB's recommendations on the DC-10. According to the NTSB, they have gone for about 50 percent of them.

We have Langhorne Bond saying that one of the safest things he could do is keep reducing the level of air traffic controllers. We have the head of the regional center out at Fremont whose staffing levels are below authorization, and he thinks they're all right. PATCO doesn't and they argue about that. But under sworn testimony, he said that if they tried to reduce his staff any more, it would cause chaos.

Now, I don't know what this gentleman, the Administrator, is trying to prove, what this gentleman is trying to do, but I think he's a disaster that goes along with the cargo door, the slats, and everything else. It was called to my attention during the break—and I don't know if it's true or not, but when he was with Mr. Boyd there in the Department of Transportation, he was one of those during the historical accident that made sure that this promotion of commerce duty was foisted upon him. Again, as he told us under oath, the only thing that that provision of law ever does for him is it gets him to the Paris Air Show.

So I would strongly recommend, in the interest of aviation safety, and also in the interest of the taxpayers' money—why we have got to promote aviation at a time when we're spending millions of dollars on TV and in the newspapers is beyond me—that this committee adopt Mr. Levitas' bill. Again, I initially felt that the duty might be properly put in the Department of Commerce. The Republicans on our subcommittee said "why should a taxpayer spend a dime to promote aviation; it's already there." I think it was—No, it wasn't Mr. Snyder. It was Mr. Harsha.

Mr. Anderson. The reason that I'm asking you about the DER's, I'm not at all satisfied with the designated representative situation. I was trying to get something a bit more specific.

Now, I see the blue ribbon committee says that they are satisfied with it, and one of the reasons is because of the supervision of DER's by the FAA.

Now, my feeling is there is not adequate supervision. You mentioned the DMIR's, the maintenance inspectors, that there's practically no FAA supervision in that. We are told that in the case of the DOA's—that's the ones who handle general aviation—that there's practically no supervision—that they report almost directly to the company and they do the signing off much more than the FAA.

And there is not enough supervision on the DER's. Now, this is my feeling, that the FAA is not doing enouqh in all three of these.

Mr. **Burton**. That's right.

Mr. **Anderson**. That's why I hoped that your committee had gone into that.

Mr. **Burton**. Well, we did go. I didn't know that I was going to be talking about that, Mr. Chairman. Really, there's nothing more interesting than reading another committee's report. We really went into that in depth. I'm not going to take your time to read it, but we do submit this report for the record. We go into it at great depth.

Again, on page 32 of the blue ribbon report, with the blue cover, it says "While the requirement of making such submissions is valuable in assuring airworthiness," et cetera, "the FAA staff—" they admit in their narrative exactly what you said, Mr. Chairman. There's a very cursory review and there also is no standard or criteria set up for a DER. They get the best person and make him a DER. How he ever loses that designation is something for which there aren't any criteria.

Mr. **Anderson**. I'm not for taking that away from them, but I'm for making sure the FAA makes sure he's doing a good job.

Mr. **Burton**. Exactly. But even if he isn't doing a good job, there's no way of taking that away from him. Once you got it, you got it. Unless the company maybe decides to bounce you. That's what I'm saying, that I see no way out of that system. At the present time, given the constraints, given the fact that the industry has the FAA outgunned in manpower and by paying higher salaries, it can even lure top people from the FAA there.

I agree with you, there's no policing of the system. There are no standards by which a DER who at one time was top flight—you know, Babe Ruth got sold to the Boston Braves. I mean, there comes a time in a person's career when maybe they don't have it any more.

Mr. **Anderson**. You're not going to retire, are you?

Mr. **Burton**. Me? No. They're going to probably trade me to the other body, for two draft choices and Lawton Chiles.

Mr. **Anderson**. Just transferring the FAA to an independent agency, or to split them off, isn't going to answer this question.

Mr. **Burton**. No, it doesn't.

Mr. **Anderson**. We have to make sure that we watch the DMIR's, the maintenance people, and DER's and the DOA's.

Mr. **Burton**. I'm not addressing myself to anything but when you take away that function of promoting aviation commerce you eliminate every excuse they've got to do anything but get in there and monitor for safety.

Sure, you could separate it out and change the name, but that doesn't make them do the job. They have used that as an excuse in a lot of their actions, and yet when you ask Bond, "Would it hurt you if this was taken away?" And Bond says, "Well, I go to the Paris Air Show." I mean, really, that's all he said.

But if you remove that conflict—and there's a conflict there—and you get down to the bottom line, you wouldn't say, "Well, gee, the cargo door may blow out, but on the other hand the planes may come in." So was it promotion of aviation safety that led to the gentlemen's agreement after the cargo door broke out, that there wasn't even an airworthiness directive, or what was it? I don't know, but I believe the Levitas bill would eliminate that promotion function and would then give them no excuse not to get in there and monitor these people. Because they have given the DER's, the DMIR's, they have given them that responsibility, but they just absolutely have given them the show.

They don't ask for material; they don't get material; they don't keep up with them. As I say, the companies and big corporations are fairly efficient. They funnel everything through one person. Like everything should go through a committee or subcommittee through the staff director. It all goes through that designated engineering rep.

When it goes to the FAA, it goes to 57 different people. I don't know what you've got if we're both working for the FAA. You were right on target with the fact that they do not police them, they do not monitor them, and again, our report went into great depth about this.

We got into this process 6 months before that crash. We didn't even want to be looking into the crash. We were looking into that certification process. Then as we looked into that, and after the crash, we found that they just figured an improbability of the engine failure and the slats happening simultaneously, and it was one in a billion so why even worry about it. But they never went through or sent the FAA their assumptions on this, and they never once assumed that possibly the engine could have been blown off and that have been the proximate cause of fouling up the slats. That was less than one in a billion. That, in fact, did happen.

So I think there has to be a greater policing of it. I think there's got to be a greater accountability. Right now I don't believe, Mr. Chairman, that if the DER actually flat screwed up—I mean, just really—the guy wouldn't be a DER tomorrow. He's still a DER tomorrow. There are no standards for them. So, one, you have got to police them to see that they do the job adequately, but then right now there's no definition of what is adequately doing a job. I think when you get the airline industry, the consumer groups and Ralph Nader all saying one thing, that the FAA is irrelevant to the certification process, that's telling you something.

The airlines say "we really don't need them. We can do it well enough ourselves." In fact, they do most of it themselves. You get the consumer groups saying "they don't do anything so they're irrelevant". You've got everybody in the business except Mr. Bond saying they're irrelevant to the process. That's a very damning indictment.

Mr. **Anderson**. In urging the repeal of the provisions of the Federal Aviation Act directing the Administrator to consider promotion of the industry, are you suggesting there should be no consideration of the cost to the industry of proposed safety improvements?

Mr. **Burton**. Not by the guy whose in charge of it, no.

What's the cost of a human life? What's the cost of 279 lives? The cost of a cargo door, which was a $2,000 fine. I don't think that should be——

Mr. **Anderson**. They shouldn't take cost relevancy into consideration?

Mr. **Burton**. Does he say that that's what he does now?

Mr. **Anderson**. No, I'm just saying—I'm asking you.

Mr. **Burton**. I don't know if that's related to the bill. I think that if——

Mr. **Anderson**. Well, you're suggesting to eliminate the promotion——

Mr. **Burton**. Yes.

Mr. **Anderson**. Are you then suggesting there should be no consideration of the cost——

Mr. **Burton**. I'm saying that the person who is in charge of safety shouldn't be making that consideration. I don't know that the promotion of aviation commerce responsibility is one that says "Well, we have to figure out how much it's going to cost for automatic hydraulic redundancy and locks on the slats versus promoting aviation commerce." I don't know if it's defined that way.

If you ask me should there be costs—Man, if the industry can't build a plane that's safe at a profit, they shouldn't build it, because it's my life and it's my life and it's your life and it's the life of the people—especially ours, the way we're flying back and forth. They can build safe planes. They can build them at a profit. I think if it's people's lives versus the corporate dollar, I'll stand—I'll probably lose the election for saying it—I'll stand on the side of people's safety rather than I will on the side of the corporate dollar.

But I don't know of any safety thing that has been forced on the industry that somehow was going to bankrupt them, or somehow is going to. I don't know if they would have done the cargo door better on the DC-10 that it would have been all right. I don't know if they would get rid of these materials in cabin that cause fire, or if they had more exit doors they could have gotten out of the plane the other day. I don't know if they could lower the ozone for the flight attendants, if that's going to make them go belly-up.

They are corporations and they've got one duty. Their duty is to their shareholders, to make a profit. I've got no argument with that. The FAA should make sure that they don't do that at the cost of safety of the flying public. Man, if they can't come up with a plane that's safe and profitable, then they ought to get into some other line of business in my judgment. But I definitely don't think it should be the FAA who should be worrying about that.

Mr. **Anderson**. But they would have to make that decision, though. You mentioned——

Mr. **Burton**. No, they shouldn't. The corporate board of directors should make it.

Mr. **Anderson**. Not if the FAA has said you have got to build a plane so it can't burn; then he'd be the one making the decision. The corporation would have to build it to meet those requirements.

Mr. **Burton**. Or they'll say "Well, I guess we'll stick with what we've got." I mean, it's the corporation who should make the decision on whether or not it is profitable to build a safe airplane.

Mr. **Anderson**. Well, they made the plane that burned up. You mentioned the Saudi Arabian airplane. Now, suppose the FAA had said you can't fly that unless you can guarantee this can't burn up?

Mr. **Burton**. Well, how long has this subcommittee, or how long have we been after them to do something about cabin safety and the type of things that have been in those seats that cause that flame and cause that asphyxiation? Ninety percent of the deaths in airplane crashes aren't due to the crash; they are due to smoke inhalation and fires. How long has this committee and other committees, how long has science and tech, how long has our committee been on them to do something about cabin safety and that equipment?

I'm not saying you can't build a plane that may not burn up. I'm saying that maybe you can put stuff in the seats that's not going to burn and set off poisonous fumes to the high degree that it happened before.

I want to give you one of the great examples of all times. Right now I believe that if you go 50 miles over water—I believe that's the figure, and I'm sure, someone here could correct me if I'm wrong—they are supposed to have liferafts. Some of the airlines said, "Well, you know, that takes up fuel, that costs money, it takes up space," and they want to change it to 200 miles. And the guy from the FAA had the chutzpah to say that it is proven that a plane could run out of fuel 200 miles out in the ocean from the coast and still make it to shore.

I asked if he wanted to be the guy to take the test. He respectfully declined. And it is due to the work of the Senators and Representatives from Hawaii, because most of their flying is over water, that maybe they backed off on that reg.

But time and time again, when the airlines come in for a waiver or a change in the regs, and it's safety versus the economics of the industry, it's 95 out of 100 that the economics of the industry win. I do not believe that should be the business of the FAA. I think their business should be safety, and if the airlines can't make a buck making a safe plane—I don't know, what are they charging now to go to New York, a dollar and a quarter or something, and it used to be $400. I mean they go up and down with these prices, so there must be something going on somewhere.

But I don't think it should be the duty of the Federal Aviation Administration that every American looks to to provide them with safe travel, to worry about whether or not what the balance sheet of the corporation is going to be at the end. I think that's the duty of the air manufacturing companies. The manufacturing company can come in and say, "Look, this regulation that you want will cost us $500,000 a plane and accomplish this; we can accomplish that same thing for $32 a plane and it's going to be just as safe," I think the FAA should then say, if the test is run, that's fine. All we want is safety; we're not trying to bankrupt you.

But I don't think it's their duty to pay with our lives. You know, the FAA should also work to push the state-of-the-art which is advanced by economic necessity.

That's all I've got to say. I don't know what the cost of the cargo door was. I don't know what the cost was in the difference between having that automatic slat-locking system on the L-1011 and on the 747 was versus the other. All I know is, there are 279 people who sure wished they had it.

Mr. **Anderson**. Administrator Bond testified yesterday that in reaching safety decisions he gives no weight to promoting the industry.

Is this testimony consistent with testimony which the Administrator or other witnesses have given to your committee?

Mr. **Burton**. Well, what's he want the duty for? I mean, he has told us that the only thing he can think of as far as promoting commerce is going to the Paris Air Show. But he went into court and argued at the time of the up-and-down on the DC-10 that he had a responsibility to promote commerce in the industry, that they couldn't ground the fleet. What was the group which is funded by an insurance company, I think, that went into court to ground the whole DC-10 fleet. The FAA said "We can't do this because we have a duty to promote aviation commerce."

In his big, thick whatever it was on the DC-10, it was supposed to be the definitive answer and it turned out to be a whole bunch of option papers. It says, "We are not unmindful of the economic impact on the industry." I think somebody should be mindful of that, but I don't think it should be them.

He might do it anyway, because I have the minimum high regard for Mr. Bond, but every time there is a thing between safety and economics, he usually comes down on the side of economics. But as I say, the only statement he has made was the one he has made in court, one they made in the report, and the other before our committee was it gets him to the Paris Air Show.

Well, if it doesn't cause him any trouble, why does he want the duty? Has he given any justification as to why he should keep it? I don't know.

Mr. **Anderson**. Mr. Levitas.

Mr. **Levitas**. Thank you, Mr. Chairman.

Thank you, John, for not only your testimony this morning, but your continued interest in this whole area.

I think you have articulated, better than I have, some of the reasons why the legislation that I have proposed needs very serious consideration.

You made reference to your discussions with the chairman regarding the Goldwater bill takes the trust fund out of the unified budget, because it's a user-paid fund and its primary purpose is to provide the safety equipment and the safety devices necessary for the maximum operation of a safe system.

Last night I had the opportunity of appearing on a program with Administrator Bond, which was nationally televised. Mr. Bond, during the course of that discussion, said one of the problems that FAA had was that they don't have enough money to put in place the safety equipment necessary—modern computers, maintenance on the computers, the navaids, the precision landing control systems and the like. He said it was just money, that's our big problem.

I pointed out that there's a $3 billion surplus in the trust fund that is not being spent, and as you suggested, I also said that it's being kept there because the Secretary of Transportation is doing his bit to help balance the budget, by keeping $3 billion of trust fund money.

Mr. Bond then said the reason that the money isn't being spent is because Congress won't appropriate it. That's what he said to a national television audience.

Now, it is my belief that that statement, at the very least, is a gross and flagrant deception of the public, and probably is an outright lie, because of Mr. Bond's knowledge of the matter.

It is my understanding that the authorizing committees of the Congress, have authorized the entire budgets for safety submitted by the Department of Transportation and the FAA, and that it has been because FAA and DOT have not submitted the budgets to cover the safety needs that the money has not been expended.

Mr. BURTON. That is absolutely true. In fact, the work of this subcommittee and our subcommittee, Bob Duncan I think 2 years ago, forced another 150 people on Bond—forced them. He didn't want them. He forced them.

He is proud of the fact that since he has been in he has cut, he's cut, and he's cut. There was a 3-year request down in San Diego for an alphanumeric scope. It was requested first by the controllers—"Well, we know we can't trust the controllers; they're looking out for themselves and they want to make the job easier." All right, so we don't pay attention to that.

Then it was requested by the western region, and he still turned it down. And then there was that crash, the PSA and the Cessna, that the experts testified had they had an alphanumeric, the odds were greatly in favor that they probably would have been able to maintain the separation and that the crash wouldn't have happened. The experts say that. I don't know.

I asked Bond about that, and he says, "Well, we had higher priorities for the $500,000 in San Diego." I said, "Well, you sure made a mistake, didn't you?" And true to Langhorne's style, he didn't admit making a mistake and then 3 weeks later he gave them an alphanumeric.

Now, that law says—I believe it sets not less than $500 million—it sets a minimum of how much money should go out of the trust fund each year. But they do not come in and ask for it. If Langhorne Bond, in my judgment, given what we have found, what the people have found, what Miss Ferraro has found, what everybody has found, if he came in and said "I need $1½ billion to make this air traffic computer system safer"—they're laying off people and cutting back people to maintain the things, they're below staffing standards on the controllers—if he came in and asked for that money, I would be surprised if Congress didn't give him that money. The people would rise up and look to see the person who voted not to give him the money.

He doesn't ask for the money. He asks for less money. The only time he got more people was when Duncan had to stick it right down his throat.

Mr. LEVITAS. I think you're absolutely correct. I believe that unless Mr. Bond misspoke, his credibility is seriously affected by this statement he made publicly last night. I hope he will take an opportunity to correct that statement and explain his——

Mr. **Burton**. Somebody should have said, "Did you ever ask for it?"

Mr. **Levitas**. That's what I asked him.

Mr. **Burton**. And what did he say?

Mr. **Levitas**. He went off to another subject.

Mr. **Burton**. I can imagine.

Mr. **Levitas**. You know, to carry that a step further, I am told that there are over 600 airports in the United States which are today handling commercial passengers that don't have towers or radar. That doesn't take into account those areas where there are not ILS systems, VASI's at the end of runways and other aids which would promote safety.

I just cannot understand, to save my life, after asking questions for almost 6 years now, why FAA doesn't move forward with a crash program to use the $3 billion surplus to cover these needs. Has your committee ever gotten into that subject with FAA?

Mr. **Burton**. Not with that specific subject. We got into what I consider to be a very important subject matter, air-to-air collision avoidance system, that they don't seem to have too much enthusiasm about.

Mr. **Levitas**. Do you know why they don't have any enthusiasm for it?

Mr. **Burton**. I've got my theory, yeah.

Mr. **Levitas**. It's not under the control of FAA.

Mr. **Burton**. Right.

Mr. **Levitas**. The lack of effort by FAA to look seriously at onboard collision avoidance systems, I think, is an institutional problem of FAA's, because it's not an FAA system.

Mr. **Burton**. Well, that's what they want. Everything has to be, you know, DABS-compatible, which it could be. They talked about one system. The primary system, in my judgment, is the back room of aviation safety, the traffic controllers and the work that they do. Although I know they have some questions about having an airborne collision avoidance system, I think it would provide redundancy and would help them on their job.

At one time—and I really couldn't believe my ears—they were working on a system that they could tie in to—and I still can't believe my ears—but it would tie into these computers somehow, that if the computer screwed up the system wouldn't work up in the air either. That wouldn't quite be redundant, in my judgment.

Mr. **Levitas**. You made reference in your testimony in response to questions by the chairman relating to the DER's that there is a lack of coordination within FAA that one person working on a similar project doesn't know what someone else working on the same project is doing. The GAO report, on pages 41 and 42 addressed this issue in part as well as other portions of their safety responsibility. Among other things, speaking of midair collisions, the GAO report says:

> Based on interviews with FAA personnel, no coordinated agencywide plan for midair collision threat was issued by FAA until December, 1978, 3 months after the San Diego, Calif., midair collision. In December 1978, the FAA Administrator stated the true relevance of the San Diego accident to our current proposals is that the accident caused us to focus systemwide on the general threat of midair collisions.

Now, again, this is an example of FAA reacting to a problem rather than taking anticipatory efforts. The same was true in the DC-10 accident.

An interesting example on page 42 talks about a failure to coordinate within FAA. FAA awarded a 3-year contract to develop or revise training procedures to reduce the number of weather-related accidents among general aviation pilots. Although the program was sponsored by FAA's Office of Systems Engineering Management, there was no communication with the Flight Standards Service. In fact, the Flight Standards Service research and development coordinator told the GAO the first time he became aware of this effort was when the award announcement appeared in the FAA newsletter.

Upon checking with another Flight Standards official, he discovered that Flight Standards had orally recommended the work not be done, since it was believed that the project would not result in anything new. Therefore, he decided that a meeting between all affected parties was needed to coordinate this effort.

Did you find the same type of stuff in the——

Mr. BURTON. Absolutely, honest-to-God, to defy description.

I would hope there is no agency in Government that is as screwed up as this one. We found in procurement where they entered into a contract against the recommendations of their technical people with General Dynamics Corp., for—I think it was 19 radars and 42 antennas, for a total of $17 to $18 million, to be delivered at a time certain.

About 6 months after the time certain, General Dynamics called and got hold of FAA and said "We can't meet the contract either on price or on time."

Now, as a somewhat attorney, I think I would have terminated and sued for breach of contract. But the FAA is a lot smarter than I am. They renegotiated the contract down to about $12 million, gave them $12 million for one radar set that they couldn't even use, and then went out to Texas Instruments and had to start the whole contract over and Texas Instruments was the company that their technical people recommended.

And coincidence of all, somebody from DOT ended up working for General Dynamics.

Now, when we asked them why they did this for General Dynamics' bailout—you know, they aren't a "mom and pop" operation; they've got a nickel or two—they said they wanted to keep General Dynamics competitive in the field. And then Arlan Stangeland, the gentleman from Minnesota, a good, conservative Republican, who Mr. Bond thought was coming to his aid, asked the question: "How could you possibly try to keep somebody competitive in the field when they just proved they were incompetent in the field?" All that did was cost the American taxpayers $12 million.

So from lack of coordination, to lack of, I think, really fervor with their job, to bad procurement policies, top to bottom, they just defy description.

And all of this can't be laid on Mr. Bond. The thing that I lay on Mr. Bond is his unwillingness to admit when a problem exists and to say "Yes, this is a problem; we're working to solve it; we would like to work with you, we would like to do something." But there has never been a problem in his life that I know of.

Finally, one of his own teams has come up with the fact that there is a problem in the computer situation, that there are three software things that are nationwide problems, and fortunately I got a copy of the report before Mr. Bond got it. He'll be rather surprised to find out that there is a problem.

Just parenthetically, the CAB, which isn't a safety agency, they are required to seek the highest degree of safety as part of whatever they still have left of their charter, and the FAA still isn't required to do that.

Mr. LEVITAS. The other point that you emphasize greatly in your testimony is one that I think underlies the philosophy behind the bill I have introduced, that having other than safety responsibilities, takes away from the focus on the FAA's primary or what should be their exclusive responsibility.

Again, in the GAO report, GAO points out, starting on page 43, that the FAA has not adequately assessed the impact of assigning nonsafety work to personnel working on safety projects.

Now, the staff went on to talk about some of their other problems. It is interesting. I think this is the key. It shows where promotion and safety come into conflict.

In this report the GAO quotes one office director who expressed concern over FAA's policy of processing exemptions within 120 days, while having no such policy for safety projects.

Now, isn't that an interesting conflict, where they have a time limit to get the exemptions approved, but no time limit or priority for processing the safety projects? Doesn't that appear to you to be the very heart of the matter, as to why they can't do both at the same time?

Mr. BURTON. I think that it is attitudinal. They may rightfully want to grant an exemption even just with the safety function and not the other. But like you say, you try to get a safety reg in and you'll be there for hours. They have a very curious thing. If they give you a waiver on a certain regulation, for instance, airlines, major airlines have what they call dispatchers, and the dispatcher and the pilot make the determination about the amount of gasoline, the flight plan, the weather, et cetera.

When my good friend Ed Dailey's airline went from charter to whatever he's doing now, and what was TIA—I don't know what the name of that airline is now, maybe it's still TIA—they were given a 1-year exemption from having these dispatchers because they were just starting up.

They are going in now for the second year's exemption, and FAA apparently has a policy that if they exempt something for 2 years, they take a look and generally they figure well, maybe the rule doesn't make any sense, so they therefore can wipe out the rule for the whole industry.

Again—and I was unaware of that one. That was a good one. A 120-day process for exemption, and they have been trying to work on safety regulations, especially for the flight attendants and the flight crews, and they have been years trying to get something done and they can't get it done.

Mr. **Levitas**. Well, I think you have made the point very effectively.

Another thing, you referred to deregulation. Under the deregulation legislation, when CAB goes out of existence, a number of its functions are going to be turned over to the Department of Transportation. There will clearly have to be an Office of Aviation within the Department of Transportation. It seems to me that that's where all of these nonsafety related functions of FAA ought to end up as well, so that the FAA has one mission, one responsibility, one focus, one concern, and that's aviation safety, and let DOT and the nonsafety directed portions of that Department deal with those matters which don't relate to safety.

Mr. **Burton**. I really think it's very important. And the people in the country are just becoming more and more aware now. We have seen charts, which I don't necessarily believe, but the charts show that computer outages—I guess except for Fremont—are on the way down. And yet just recently people have become aware of them.

In other words, 3 years ago they were up much higher than they are now, and nobody knew they existed. Boy, now, I'll tell you, just every day somebody knows something is happening. I'm sure that Mr. Mineta gets it down at San Jose. We get it in San Francisco.

Planes for years have taxied on different runways, and all of a sudden now people see something that they have seen all their life and they call and say there was a near miss on a runway. There was no near miss on the runway. They were going on different runways and everything was safe. But the people are becoming very concerned about this. I guess they're becoming aware.

I'll tell you, all we need is one, all you need is one midair during a computer outage, and you'll see Langhorne Bond dancing around, turning around, blaming Congress, blaming everybody else. I mean I hope we can solve it——

Mr. **Levitas**. Before it happens.

Mr. **Burton**. Right. That's the whole purpose of safety is to prevent accidents, not to go in after the accident and say "Boy, we screwed up there."

Mr. **Levitas**. That's a part of the problem.

One last thing. Another attitude that was expressed by Mr. Bond last night in our discussion, even though the number of near misses has increased over the last few years, for whatever reason, Mr. Bond says "Don't worry about that because the bottom line is how many dead bodies are there." It sounds like the Vietnam war corpse count to prove whether you're winning or losing the war.

All it's going to take is one of those near misses to end in tragedy, and the type of approach that has been taken up to this point will turn about overnight and we will build a better system on the bodies of those people who died in the tragedy.

Mr. **Burton**. This is living proof of that, because at the first hearing that we had on certification, which as I say was some 6 months before Chicago, there was nothing wrong with the system, and as Langhorne said, "if the system ain't broke, don't fix it." After the calamity, his own people said you had better do something about fixing it.

Mr. **Anderson**. Mr. Fary.

Mr. **Fary**. I have no questions of the gentleman.

Mr. **Anderson**. Mr. Mineta.

Mr. **Mineta**. Thank you, Mr. Chairman.

I want to thank you, Mr. Burton, for your work on your other committee. As I listen to a lot of these arguments relative to the promotional activities of the FAA and the safety functions that they have under their charter, I am wondering what kinds of FAA programs do you feel should not have safety as their primary function and should therefore be split off from the FAA?

I haven't had a chance to review your report and I'm looking forward to reading it. But it seems to me that that's one of the primary considerations that we have here.

Mr. **Burton**. Well, Mr. Mineta, as I said, when I asked the question of Mr. Bond, the only example he gave of how this commerce thing even involves him is that he goes to the Paris Air Show. So I guess that's what would split off.

I mean, that was his statement of what the commerce promotion of aviation is, how he was involved in the promotion of aviation commerce.

Mr. **Mineta**. So even if we were to remove the words "to promote aviation," how much really would that statutory difference make?

Mr. **Burton**. I think it would be an attitudinal one. I think it would clearly mean he couldn't go into court, as he did after the DC-10 crash. And Bill Jenning's group, whatever the name of their group, was—they sued to try to keep all DC-10's on the ground, and the argument that the FAA made in court was that it could not ground the DC-10 fleet because the agency had a duty to promote aviation commerce.

That shouldn't have been the reason. They shouldn't have been grounded because they were safe enough to fly, or if they weren't safe, they should have been grounded and it should have had nothing to do with aviation commerce

He later recanted on that. I just think it would give them a flat, clear mandate where they couldn't be balancing corporate dollars versus safety. That's my basic thing. I don't think that aviation needs promotion. I'll bet you there's five full-page ads in this morning's Post right now, along with an editorial endorsing Levitas' bill, I think—or that was a week ago. But, you know, there's constant promotion of aviation now. That was a carryover.

The first appendix in our report is a memorandum, and it shows clearly the historical accident of how this whole thing got put into the FAA as far as promoting aviation commerce.

I don't think the decision on whether the DC-10 or the X-111 or the Model T should be allowed to carry people or not should be an economic one from the FAA's standpoint. You're either safe to go or you're not safe to go. If they are safe to go, they ought to be allowed to go; if they aren't safe to go, you should not worry about the economic impact to promote commerce.

Mr. **Mineta**. As I understand it, in response to an earlier question, you had indicated the Levitas bill would eliminate the promotional function within FAA, and as I read the bill, it seems to me that it would not eliminate that promotional function. Really, what it is, it in effect moves it to DOT. It seems to me, as you move it from FAA to DOT, you're really giving it more visibility of, in effect, promoting it to the Office of the Secretary of Transportation——

Mr. **Burton**. Who will then turn around and redelegate it to the FAA.

Mr. **Mineta**. But the function isn't eliminated; that's the point.

Mr. **Burton**. I believe initially, because Mr. Levitas' bill was the only game in town, I cosponsored it. Initially I thought maybe, if you ought to promote commerce, it should have been in Commerce. The Republican members of our committee were the ones who pointed out who needs to spend taxpayers' dollars to promote aviation? It's being promoted all around. I don't know that the Government should be in the duty of promoting it. At the time when all there was were the mail routes out of Newark, when it was a fledgling industry, there was a need. I really don't see the need to spend one taxpayer's dollar to promote aviation.

As Mr. Levitas just said, maybe it should go into a Department of Aviation that's going to take CAB's thing. I'm not sure what role the Government has to have in promoting aviation commerce, because it is being promoted all around us.

I think we've got a job in safety, and as far as science and tech is concerned, and R. & D. there are some jobs. But as far as promoting and all that, I really don't know why we should be spending a buck on it when we aren't spending money on other stuff.

Mr. **Mineta**. The fact that wording is in there in the FAA charter, I am wondering to what extent would you say the amount of money that they're spending on promotion versus safety——

Mr. **Burton**. Again, I have no idea, except to give you what Langhorne told me—and I guess you weren't here earlier. They have been cutting down on travel and training because of the congressional reduction in travel costs for the people who repair and maintain the computers.

Mr. **Mineta**. To check on the radio systems and——

Mr. **Burton**. Yes; and they've been cutting that down.

Mr. **Mineta**. That was congressional action that imposed the travel restrictions.

Mr. **Burton**. Right. So he can go with his entourage to the Paris Air Show and some computers can go begging. That's a hell of a good sense of judgment on the part of the Administrator.

I don't know how much money they spend on promotion, but I think it's an attitudinal problem and I think when the Administrator gets into a crunch he feels that he's got to weigh that. I don't think he should weigh that.

As I told the chairman, I don't think he should be weighing the economic impact. I think he should be weighing the safety. The economic impact should be weighed somewhere else.

Mr. **Mineta**. Have you considered the possibility of a draft, a rewrite of the statutory statement of Federal Aviation policy? You indicate on page 2 of your testimony that the first step that's needed now is a rewrite. I was wondering if you had considered anything in that regard.

Mr. **Burton**. We were considering it—I'll tell you, we got into the GSA reform bill, which finally just moved out of the House this week, the computer outages, and Dennis McQuade willing, next year I might—I might get into that.

Mr. MINETA. Mr. Burton, even if all the promotional or nonsafety functions are removed from FAA, would the FAA still be required to evaluate the cost benefit ratio of any safety regulations just like any agency has to do under the cost benefit regulations?

It seems to me we wouldn't be moving or we wouldn't be changing that by removing the promotion clause.

Mr. BURTON. Well, if there's a cost benefit ratio, we may not be removing that. But then, they only have one duty; their duty is to safety. I don't know, they can measure lives against a cargo door, slats, things like that. But they would not have that other problem, which is a statutory situation. At least they could do it like an honest broker anyway. They come down on the side of the airlines every day of the week anyway, until something comes up that is so gross that they have to do something.

Mr. MINETA. How would you make a judgment on something if you don't have a standard? The standard right now is cost benefit ratio and it seems to me you wouldn't want the FAA to completely disregard the cost-benefit ratio——

Mr. BURTON. No; I didn't say that I would completely want them to disregard it. But if they didn't have a duty to promote aviation commerce, they wouldn't have to look at it from anything other than the way other agencies do. But having to promote it, they have got to look at that aspect of it.

Now, the cost-benefit ratio of 279 lives, the cost-benefit ratio of the alphanumeric down at San Diego, I think would have been perfectly all right.

The San Diego TCA thing made nobody happy. The Administrator tried to have it both ways and they all hate him. The reason that was hung up so long, in his infinite wisdom—I forget how many he lumped in, Mr. Chairman, 39 or 42 TCA's, so the people in San Diego were fighting the fight of the people—you know, Mr. Snyder or Mr. Harsha—people from other areas that didn't want one, instead of going through one rulemaking process.

He could go through cost-benefit ratios on safety improvements and he would have to do it based on safety. I don't see that he would be deterred from doing that by eliminating commerce necessarily. But I think by having commerce in there, it gives him a little bit of weight to lean toward the industry, where if he leans much farther he will tip over.

Mr. MINETA. I haven't had a chance to look at other charters, but I'll bet if you looked at FDA or FEC or any of them, you also would probably find that same kind of duality there, promotion of, let's say, safe drugs. And at the same time they have the ability to be a regulatory agency relative to——

Mr. BURTON. Wait. Promotion of safe drugs, all right. That's something different. Promotion of aviation commerce—that's safe drugs, all right? Safe airplanes, there's nothing wrong with that. They aren't in the business of selling drugs. They aren't in the business of promoting drugs. They're in the business of seeing that drugs are safe.

What I'm saying is I see no reason for the Federal Government to be involved in promoting aviation commerce, when hundreds of millions of dollars a year are spent on it, but especially to have this industry have that, it just gives FAA almost a statutory justification to lean toward the industry on a cost-benefit ratio.

Again, if all it does is let Bond go to the Paris Air Show, we may as well get rid of it. I think it has a little more than that myself. I think it's attitudinal, as Mr. Levitas said.

Mr. **Mineta**. Thank you, Mr. Burton.

Thank you, Mr. Chairman.

Mr. **Anderson**. Ms. Ferraro.

Ms. **Ferraro**. Thank you, Mr. Chairman.

I have a little bit of a problem, and that's the definition of "promotion." I get the impression of what you're saying, promote is what the advertisers might call promotion, which is ticket sales, increase profits, that type of thing.

Mr. **Burton**. Promote the use of it.

Ms. **Ferraro**. My impression of the word promotion in this thing is to make sure that this part of the industry, the travel industry, remains viable. I don't see how you can separate that promotion, that definition of promotion, from safety into two separate agencies.

Mr. **Burton**. If that's the way to make the industry viable, it's not holding them to any safety standards—let them have one pilot, let them do whatever they want to do, let them make as much money as they can make. That'll make them viable.

Ms. **Ferraro**. I don't agree with you that making money is the way that industry is going to—I think it's a segment of the transportation system that has to be a safe system.

What I'm point to, John, is we had hearings in New York about a week-and-a-half ago in which PATCO and the FAA testified. There has been several outages in New York over the first 2 weeks of July. What had happened was, according to PATCO, was they had a breakdown in computers; the point of the FAA was there was a deliberate slowdown.

I can see FAA's need to participate in the safety part of it——

Mr. **Burton**. That's their job, Geri. That's their job.

Ms. **Ferraro**. OK. Let me go further.

I also see the need to continue the system so that it continues to operate. I don't see how you can separate the safety part and the operational part or promotional part.

Mr. **Burton**. I don't understand what you mean by the promotional part.

Ms. **Ferraro**. Well, evidently our definition of promotion is not the same. You're taking promotion as being the advertising part, I think.

Mr. **Burton**. No; promoting aviation was there at a time when they were trying to promote people to use planes. Now, what do you mean by promotion?

Ms. **Ferraro**. Maintaining the airline industry, the air transportation industry, as part of the national transportation system. It is maintaining that as a viable section of the industry.

Mr. **Burton**. How would they do that?

Ms. **Ferraro**. Well, when you take a look at what has happened—and one of the things that was testified to was that the air traffic controllers said they were going to follow the book, and they were going to adhere to every single regulation that the FAA had in their books in reference to air traffic control.

When they do that——

Mr. **Burton**. It's a slowdown.

Ms. **Ferraro**. [continuing]. It's a slowdown. In that way, when you have airplanes circling from 4 to 6 hours, it seems to me at that point the FAA should be able to come in and say "OK, let's get this section of the industry moving and get those planes on the ground."

Mr. **Burton**. That has nothing to do with promotion. The air traffic controllers work for the FAA. The FAA put out the book. The controllers follow the book. If following the book slows down the flights, there's something wrong with the FAA's book. That's got nothing to do with promotion. Maybe they ought to take a look and update the book.

Ms. **Ferraro**. Again, the problem is your definition of promotion and my definition of promotion. I think promotion goes beyond excess profits or profits at all.

Mr. **Burton**. How would promotion fit into the controller's air traffic control part of the book; I don't understand.

Ms. **Ferraro**. I think what happens is that you have safety regulations issued, and I think what occurs is that air traffic controllers, just like any other people, have to exercise judgment, or are given that discretion to exercise a certain amount of judgment when they're doing their job. That's part of their job.

I think if they sat down and crossed every "t" and dotted every "i", you would have what we call slowdowns, what people call a breakdown in the system. You would have the industry not being promoted. I hold that in different terms than you.

Mr. **Burton**. But that isn't promotion of the industry. That's traffic safety. That's FAA doing its job.

Ms. **Ferraro**. Again, it's a definition of promotion, which I have difficulty with. I think it's more than——

Mr. **Burton**. You definition of what you call promotion, I find no problem with that. But I don't think eliminating the promotion function would in any way adversely affect that.

Ms. **Ferraro**. You think then that air traffic controllers would still stay under the safety administrative end?

Mr. **Burton**. Absolutely That's what they are. They are the backbone of air traffic safety, the traffic controller. They are FAA employees.

Ms. **Ferraro**. I would like to make an inquiry of someone on the committee. Yesterday, when Mr. Matsui testified, did he indicate that that was not to go under the safety section but was to be kept under promotional?

Mr. **Mineta**. Right.

Ms. **Ferraro**. So that was not the testimony that we received from the author of the bill yesterday.

Mr. **Burton**. Well, Matsui's got a different bill.

Ms. **Ferraro**. But he was testifying on all three of them basically.

Mr. **Anderson**. He had no objection to letting the bill be amended to include it in the safety part.

Mr. **Burton**. I think what we're talking about is two different things. I don't think that we're that far apart. But you can't have the person who is supposed to tell you when you get on that plane that plane is going to be safe, it was designed safe, manufactured safe, maintained safely, worrying about the viability of that industry. Do you know one of the reasons for the problem with the DC-10? On the profit and the viability of the industry, it was better to use a forklift and take the engine and pylon off all at once than it was to do it the proper way, the way McDonnell Douglas told them to do it.

Ms. **Ferraro**. That's not a decision of the FAA. That was a decision of the airline.

Mr. **Burton**. I know. But that's the viability of the industry. The weakness of the FAA is they didn't inspect or even notice that one.

Ms. **Ferraro**. My point is, though, if I were to accept your definition of promotion, it is merely to see that the industry makes profits and take it in the advertising sense; then I would agree with you, that that function should be removed. But if I were to take it as promotion was defined yesterday by our witnesses, then I would have to disagree with you as far as the separation——

Mr. **Burton**. I wasn't here yesterday so I don't know how they defined it. But I think FAA's main duty, sole duty, ought to be safety. If they could make air travel safe, if they did their job to the nth degree, they would be doing wonders to promote aviation commerce.

I'll tell you something. People are praying for fast speed trains, praying for them. The question I get asked more than any other is, am I afraid to fly. I'm not afraid to fly because I'm not afraid to die, because if you're dead, you're dead, and you can't worry about nothing.

So the best way for FAA to really make that a viable industry is to follow the suggestions of Chairman Anderson and some that we have made, that they have to take the system they've got and improve on it and not be encumbered by and use as an excuse this promotional thing; that they shouldn't make a decision on whether a plane should be grounded or not grounded on an economic basis or viability of the system. It should be whether or not the plane is airworthy. That's the point I'm making.

Ms. **Ferraro**. Thank you.

Thank you, Mr. Chairman.

Mr. **Anderson**. Mr. Hutchinson.

Mr. **Hutchinson**. Thank you, Mr. Chairman.

John, there are a couple of questions I want to ask, and I won't keep you too long because I realize you're getting a little hoarse.

Your comments relating to your observations on the blue ribbon report, where the factual array and then the conclusions really don't support what the facts say——

Mr. **Burton**. Well, the facts are a lot stronger than the conclusions.

Mr. **Hutchinson**. I understand, and I agree with that. And I'm concerned about that. I don't want to replow ground that's been plowed, but I noticed that as far as the independent objectivity of the designated reps that, which could be a conflict of interest in certain obvious situations, that one of the reasons they state—one of the four reasons they state mitigates any conflict or any objectivity, lack of objectivity, is that the FAA reserves to its own staff the most critical design decisions and approvals. I understand that's one of the things they say.

Two pages earlier they're talking about factors that have contributed to a lesser technical competence in the FAA, especially in the offices where type certification is performed, that the technical oversight is becoming superficial. You obviously don't agree with the fourth reason that they give, is that right?

Mr. BURTON. What was the fourth one?

Mr. HUTCHINSON. That was the one where they reserved to their staff the most critical decisions.

Mr. BURTON. If you have the time, I wish you would also read our report——

Mr. HUTCHINSON. All right. Do you have an extra copy?

Mr. BURTON. Yes. Because we went into that in depth. They testified that they don't look at everything they get, and they don't even get everything. It's "I'll give you five pages here and the rest of the stuff is back in our safe at the plant somewhere." They never give them the assumptions upon which their decisions are made. When they did the failure mode analysis on things, they aren't even submitted. Those are the key things. Those are the things about the cargo door on the DC-10. Those are the things about the engine and the slats. They weren't even submitted to the FAA.

Mr. HUTCHINSON. Well, let me take that further.

In talking about the designees holding key technical positions, they are usually selected from the ranks of the firm's more senior engineers, particularly having 15 to 20 years experience, and many hold supervisory positions as well.

Are the designees holding supervisory positions concurrently with being DER's?

Mr. BURTON. I believe.

Mr. HUTCHINSON. So they possibly are in a position of not only checking the work, but checking the work which they may be responsible for; is that correct?

Mr. BURTON. Yes. It is the fact that that potential conflict is there—You know, the DC-10 was the brainstorm of John Brizendine, the head of McDonnell ,Douglas, who I like very much. But, you know, that's his thing. He can't find fault with it. You know, it's your creation and you can't do it.

You see, this is what happens all the way down the line, from design to manufacturing to maintenance. The FAA delegates it to the airline and to the manufacturer, and then they don't review it, as the chairman said. There's no way that we could find that many people and hire that many people to do it. If I had my druthers, I would love to have an FAA person at every place looking over their shoulder. But they don't even check to see if they get all the work.

Until after the DC-10 crash in Chicago, they didn't find out that they certified it without having all the necessary material. In other words, there are certain things you have to have. You have to have 10 pieces in a pie. They only had eight of them, and they didn't even know that until after the crash. They certified the plane without having all the material necessary to make the certification, because part of it was still back at McDonnell Douglas.

Mr. **Hutchinson**. Well, obviously the aircraft industry pays their engineers higher than the FAA can pay theirs.

Mr. **Burton**. Right.

Mr. **Hutchinson**. And that becomes a problem on being able to attract competency, I would think.

Mr. **Burton**. Yes.

Mr. **Hutchinson**. Although it costs money, have you all considered the Government or the FAA putting out some contract engineering type things?

Mr. **Burton**. I think that long range we have to look into that. I think short range, we just have to police—in other words, we overdelegate, when we delegate them authority, retaining some to us, the Government, the FAA. But then we redelegate some more out of it and we just don't do the job. I mean, it comes in and what do you do? You don't get all the information you need and you don't read all that you get. That isn't a way to certify an airplane.

As I understand it, in the certification process of general aviation planes, it's even grosser.

Mr. **Hutchinson**. Mr. Chairman, I am very concerned about the fact that we have designated reps who, in their job with their employer, may be responsible for certain areas of design; and yet they are in the position of certifying their own design. I think that's a very great weakness in this situation.

I'm not trying to point the finger, that anybody would be subject to a conflict of interest, but that really doesn't hold water very well. You can't certify what you're responsible for designing. The DER's ought to be, if we're going to delegate that, they should be in some capacity with that company where they're kind of independent of their design.

Mr. **Burton**. They're right in on it, and they are the people who know the most about it, because they start from day one until the end, and they are the ones who know the most about it.

As I said, you'll get one report, Geri will get a report, Mr. Anderson will get a report. You know, one place we found out there was a mail drop or something for the FAA. They were mailing them to some office. There's a shift in personnel and I'm picking up the workload on a big plane because maybe you've retired and I took over your thing, and I don't even know what it's all about.

So it is a problem, and there can come a time when—well, there were two things. There was the slats and the cargo door, where they looked at these things; they saw maybe there was a problem, but they said on the other hand it probably isn't. They rejected it and never sent that information into the FAA.

Mr. **Hutchinson**. One other question, Mr. Chairman.

Are these same DER's—some of them hold positions, John. Did you find they're also eligible for bonuses for jobs well done, that type of thing, as far as their salary and so on?

Mr. **Burton**. That I wouldn't know. I know, the way the certification process works, I go to you with this blueprint, you're United, and I say I've got a plane that's going to hold 900 people, it will get you from New York to San Francisco in 32 minutes—bing, bam, boom, this is it. They look at it; they sign a contract. That's a bankable item and boy, you're off and running because there's hundreds of millions of dollars at stake. They have time schedules. One of the problems they found with the DC-10s, when they went through all these inspections, which was fortunate, was that a lot of the fasteners were getting ready to become unfastened and that was a quality control problem in the manufacturing.

So I don't know that they would get a bonus, maybe they're in profit sharing. But I don't see it as a black and white thing, but that area is so grey and has that potential, that the FAA must, if they're going to keep that system, as the chairman said, they've just got to absolutely improve their oversight over it.

You know, the workload of this Aviation Subcommittee, the certification process is but one small part of what you have to do on oversight. The FAA is 10 percent of our jurisdiction and 90 percent of our darned time.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

Mr. ANDERSON. Thank you.

We're going to have to recess. Thank you for being here, John. You have taken 2 hours of our time, and we have nine witnesses—

Mr. BURTON. Hey, I came in with a two-page statement and you asked for it. [Laughter.]

Mr. ANDERSON. We have nine witnesses today. If we give them all the same time as we gave to you, and don't take any lunch or any dinner, we'll finish at 4 a.m. [Laughter.]

So we will come back in about 10 minutes and take our next witnesses. Thank you very much, John, for an excellent presentation.

Mr. BURTON. Thank you, Mr. Chairman.

Mr. ANDERSON. We'll stand in recess for about 10 minutes.

[Whereupon, the subcommittee was in recess.]

Mr. LEVITAS [presiding]. The subcommittee will come to order, please.

The next witness is Robert E. Poli, president of the Professional Air Traffic Controllers Organization. Mr. Poli, we welcome you. We're happy to have you here today and look forward to your testimony.

Let me remind you that under the rules of the committee your oral presentation must be limited to 10 minutes, and we will receive in its entirety any written statement that you might have.

Mr. Poli, the full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF ROBERT E. POLI, PRESIDENT, PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION

Good morning, Mr. Chairman and members of the Subcommittee. I am Robert E. Poli, President of the Professional Air Traffic Controllers Organization. On behalf of this country's 17,000 professional air traffic controllers, I appreciate the opportunity to appear before you today concerning air safety and proposed changes to the mission of the Federal Aviation Administration. We will address ourselves to the situation as it exists today, to some analogous experiences in other government Agencies, and to the general thrust of the proposed legislative remedies.

PATCO has had the pleasure of testifying before you and this Subcommittee, Mr. Anderson, on a number of occasions over the past few years. Our membership appreciates your continuing interest in the air traffic control profession and your concern for the well-being of those we all strive to serve, the flying public.

It should be stated at the outset that the United States air transportation system is one that every one of us in this room—the people who make that system work—can be proud of. A passenger airliner takes off or lands somewhere in the United States on the average of every three seconds, around the clock, every day of the year. In 1979, 318 million passengers flew a total of 256 billion miles—some one million times the distance to the moon. The number of passengers carried by domestic airlines has risen 75 per cent in the part decade. Virtually every one of those flights was guided from takeoff to landing by highly qualified air traffic controllers and pilots.

Out of a total of 301 million airline passengers, 350 people died in U.S. commercial aviation accidents last year, a passenger fatality rate of only 0.115 per hundred million passenger miles flown. To look at it another way, U.S. airlines moved a population greater than the population of the country as a whole—yet achieving a safety record unequalled by other modes of transportation.

Excellent as our airspace system is, there is no room for complacency and much room for improvement. Representative Levitas of Georgia has stated the central question as follows: Are we doing the best we can?

Based on a dozen years of dealing with the Federal Aviation Administration over issues ranging from air traffic controller staffing to the reliability of computerized radar equipment, I submit to you that the answer is a resounding negative. Many in the aviation community share this view and innumerable reasons have been postulated to account for the FAA's shortcomings. To obtain a fully accurate answer, I believe one must go back all the way to the Agency's inception.

Section 305 of the Federal Aviation Act of 1958 places upon the Administrator of the then Federal Aviation Agency the responsibility to "encourage and foster the development of civil aeronautics and air commerce in the United States and abroad." Section 307 of the Act "authorizes and directs" the Secretary of Transportation and by inference the FAA Administrator "to order the use of the navigable airspace under such terms, conditions, and limitations as he may deem necessary in order to insure the safety of aircraft and the efficient utilization of such airspace. This section further grants FAA the authority to operate the air traffic control system and to prescribe airspace rules and regulations.

Thus the FAA is charged with the responsibility to promote, as well as the requirement to regulate, American aviation. And therein lies an inherent conflict. Experience has demonstrated that regulation and promotion are simply not compatible goals for this, or any other, Federal agency in the late Twentieth Century environment.

Over the twenty-two years that the FAA has been in existence, a plethora of studies and management analyses have been undertaken. Some were done internally by the FAA, some by outside organizations or consultants. Most sought to identify and correct a specific problem or tightly defined area of Agency jurisdiction. Not until earlier this year did a study appear which looked at the situation on an Agency wide basis.

The General Accounting Office (GAO) was mandated by the Congress at the request of Congressman Levitas and with the support of Representative Johnson, the Chairman of the full House Public Works and Transportation Committee, to conduct a management audit of the FAA. They were to look at the way the Agency decision making process functions rather than at the technical value of any project or regulation.

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It is clear that when FAA talks about the balancing of private rights and public obligations, the concern is economic. To what extent can persons and corporations be forced to spend money to assure the safety of the flying public, while at the same time keeping the costs of such safety requirements from detering growth in the aviation industry. At the risk of oversimplifying, the dilemma can be stated succinctly: How safe is safe?

Shortly after the GAO report was published, a second study of FAA procedures and management was completed. The independent National Research Council reported the findings of its inquiry into FAA certification of commerical passenger aircraft. This blue ribbon panel of aviation industry experts had been assembled as the FAA began a soul searching investigation following the catastrophic crash of a DC-10 in Chicago in May, 1979.

In contrast to the GAO study, which dealt with the FAA as a whole, the Research Council focused on the Agency role in aircraft certification. But, as with the GAO conclusions, the Research Council found a host of management problems at FAA. Time does not permit us to discuss each in detail. But their central conclusion gives one pause for lengthy and serious reflection.

While paying tribute to FAA's high quality technical proficiency in the past, the panel is deeply concerned that the Agency is losing some of the vaunted technical competence and knowledge. Unless major structural changes are made now, FAA could fall victim to a syndrome not uncommon among regulatory agencies as they mature. It could slip behind the levels of technical competence and knowledge of the industry it is mandated to regulate.

The reports from the General Accounting Office and the National Research Council, through disturbing in their findings and implications, are timely in their appearance. Their recommendations can form a framework for the deliberations of this Subcommittee and the input of the aviation community as we contemplate possible changes to the mission of the FAA.

Before reaching any conclusions, this Subcommittee should consider the experiences of other Federal agencies which found themselves burdened with conflicting mandates to regulate and promote.

The Federal Communications Commission is mandated by Section One of the Communications Act of 1934 to promote the development and availability of telecommunication services in the United States. Like the Federal Aviation Act a quarter century later, this law was passed when a modern telecommunications network was in its infancy. The FCC embarked on almost one-half a century of intensive regulation before discovering that "regulation" and "promotion" frequently work against each other.

For the last two Congresses, the House and Senate have been actively engaged in a massive overhaul of the 1934 Act. What Congress and the FCC have both tacitly acknowledged is that the best way to promote is to deregulate and allow the market to take care of the developmental aspects. As the FCC is beginning to lift the heavy mantle of economic regulation, new communication services and industries are springing up daily.

The United States Department of Agriculture has also been reorganized in recent years to separate regulatory and promotional functions. USDA has a dual role of policing food safety and being the farmer's voice in government, especially to promote the many facets of the agriculture industry. These conflicting aspects of the USDA jurisdiction are able to function separately with separate offices, separate staffs, separate authorizing statutes, and so forth. But this luxury can only be realized because of USDA's enormous size. FAA has neither the manpower nor the funding to effectively carry out such a separation.

The old Atomic Energy Commission (AEC) labored for many years under the bureaucratic burden of a dual mandate to regulate and promote. It was responsible for the development and enforcement of stringent regulations on a rapidly developing technological frontier. At the same time it was to encourage peaceful uses of atomic energy, chiefly as an inexpensive domestic source of electric power.

The original promise of atomic power degenerated over a few years into an incredibly complex debate over the safety of atomic power and the standards under which licenses for atomic reactors were granted. The conflict was finally resolved when the Congress ordered formation of a Cabinet level Department of Energy with separate operating elements to handle the regulatory and promotional aspects.

Outside the FAA, I know of no other consumer safety agency that labors under the same conflicting mandate to regulate and promote. The Federal Trade Commission protects the rights of consumers; it does not encourage wholesale or retail

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trade. The Securities and Exchanges Commission polices the securities markets; it does not in any manner foster the marketing of stock or bonds.

Similarly, the Environmental Protection Agency, the Consumer Product Safety Commission, the Occupational Safety and Health Administration, and the Food and Drug Administration all have protection of the public safety and health as their exclusive reason for being. It would be patently absurd to expect the Environmental Protection Agency to actively promote the construction of steel plants, while opposing construction on environmental grounds at the same time. One function would effectively cancel the other.

Despite the safety record amassed by the air traffic control system, American commercial aviation, and the professionals who make our air transportation system the finest in the world, there is no room for complacency or a diminution of vigilance. The findings of the General Accounting Office and National Research Council reports make for thought provoking and compelling reading. The spectre of an FAA losing technical competence to the point of being less knowledgeable than the industry it is required to regulate is very real. And yet it can obviously not be allowed to happen.

FAA clearly suffers from an inherent conflict in its dual missions to regulate and promote American civil aviation. At this time—22 years after its creation—it also suffers from serious and pervasive management deficiencies.

The various legislative proposals now being offered suggest some intriguing and hopeful remedies. Valuable information can be obtained through a careful study of how other regulatory agencies managed to resolve the inherent conflict in a statutory mandate to regulate and promote.

The Congress, the diverse elements of the aviation community, and the FAA itself should now commence a vigorous debate to determine the optimum solution to the identified problems.

Both the challenge and the opportunity are clear. It is within the grasp of this Subcommittee and all of us in this room today to create a less bureaucratic and more responsive Federal air safety structure. It is imperative that we act now to preserve for the future the continued high quality which the American air transportation system proudly possesses today.

Again, on behalf of our 17,000 professional air traffic controllers, I very much appreciate the opportunity to testify before you today.

I will be very happy to answer your questions at this time.

Mr. LEVITAS. Please proceed.

TESTIMONY OF ROBERT E. POLI, PRESIDENT, PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION, ACCOMPANIED BY MICHAEL SIMONS, SAFETY COORDINATOR

Mr. POLI. Thank you, Mr. Chairman. I will capsulize it for the record. That's a tough act to follow, but I'll do the best I can.

Good morning, Mr. Chairman, and members of the subcommittee. I am Robert E. Poli, president of the Professional Air Traffic Controllers Organization. With me today from PATCO is Michael Simons, our safety coordinator.

On behalf of this country's 17,000 professional air traffic controllers, I appreciate the opportunity to appear before you today concerning air safety and proposed changes to the mission of the Federal Aviation Administration.

We will address ourselves to the situation as it exists today, to some analogous experiences in other Government agencies, and to the general thrust of the proposed legislative remedies.

PATCO has had the pleasure of testifying before you and this subcommittee on a number of occasions over the past few years. Our membership appreciates your continuing interest in the air traffic control profession, and your concern for the well-being of those we all strive to serve, the flying public.

As excellent as our airspace system is, there is no room for complacency and much room for improvement. Representative Levitas of Georgia has stated the central question as follows: Are we doing the best we can?

Based on a dozen years of dealing with the Federal Aviation Administration, over issues ranging from air traffic controller staffing to the reliability of computerized radar equipment, I submit to you that the answer is a resounding negative. Many in the aviation community share this view and innumerable reasons have been postulated to account for the FAA's shortcomings. To obtain a fully accurate answer, I believe one must go back all the way to the Agency's inception.

Section 305 of the Federal Aviation Act of 1958 places upon the Administrator of the then Federal Aviation Agency the responsibility to "encourage and foster the development of civil aeronautics and air commerce in the United States and abroad."

Section 307 of the Act "authorizes and directs" the Secretary of Transportation, and by inference the FAA Administrator, to "order the use of the navigable airspace under such terms, conditions, and limitations as he may deem necessary in order to insure the safety of aircraft and the efficient utilization of such airspace." This section further grants FAA the authority to operate the air traffic control system and to prescribe airspace rules and regulations.

Thus, the FAA is charged with the responsibility to promote, as well as the requirement to regulate, American aviation. And therein lies the inherent conflict. Experience has demonstrated that regulation and promotion are simply not compatible goals for this, or any other, Federal agency in the late 20th Century environment.

Over the 22 years that the FAA has been in existence, a plethora of studies and management analyses have been undertaken. Some were done internally by the FAA, some by outside organizations or consultants. Most sought to identify and correct a specific problem or tightly defined area of Agency jurisdiction. Not until earlier this year did a study appear which looked at the situation on an agencywide basis.

The General Accounting Office was mandated by the Congress at the request of you, Mr. Chairman, and with the support of Representative Johnson, the chairman of the full House Public Works and Transportation Committee, to conduct a management audit of the FAA. They were to look at the way the agency decisionmaking process functions rather than at the technical value of any project or regulation.

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It is clear that when the FAA talks about balancing of private rights and public obligations, the concern is economic. To what extent can persons and corporations be forced to spend money to assure the safety of the flying public, while at the same time keeping the costs of such safety requirements from detering growth in the aviation industry. At the risk of oversimplifying, the dilemma can be stated succinctly: How safe is safe?

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Before reaching any conclusions, this subcommittee should consider the experiences of other Federal agencies which we have included in our testimony, Mr. Chairman, and we will submit for the record.

Despite the safety record amassed by the air traffic control system, American commercial aviation, and the professionals who make our air transportation system the finest in the world, there is no room for complacency or a diminution of vigilance. The findings of the General Accounting Office and the National Research Council reports make for thought-provoking and compelling reading. The specter of an FAA losing technical competence to the point of being less knowledgeable than the industry it is required to regulate is very real. And yet it can obviously not be allowed to happen.

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Again, on behalf of our 17,000 professional air traffic controllers, I very much appreciate the opportunity to testify before you today.

We will answer any questions now, Mr. Chairman.

Mr. LEVITAS. Thank you, Mr. Poli, for a fine statement and the examples you have given of some of the other Federal regulatory agencies which I think are important in that you point out that agencies such as the Securities and Exchange Commission, the Federal Trade Commission, the Consumer Products Safety Commission, the Environmental Protection Agency, et cetera, have the responsibility of policing in the areas that they have jurisdiction over and not to promote the welfare of those particular industries. Those fall within other jurisdictions.

In the case of FTC, you got the protection of the consumer. It is the Department of Commerce role to promote the industry and not put the two together. As you point out in your statement, it would make little sense for the Environmental Protection Agency to promote the construction of steel plants while, at the same time, opposing construction in certain forms on environmental grounds, and I think the point is well taken.

In your testimony, Mr. Poli, you indicate that you believe there are conflicts between FAA's promotional duties and its duties to further safety. Does this conflict, in your opinion, interfere with FAA's management of the air traffic control system?

Mr. POLI. I certainly do. I feel that there are times when decisions are made by the FAA in areas of safety that the overriding pressures from economic issues could dictate a different decision.

I think the examples today that Congressman Burton gave, the two airplanes, the one in Chicago, the disaster in Chicago, and certainly the one in Paris are prime examples of that. As far as safety is concerned, if you will look at the National Transportation Safety Board and the recommendations they give that the FAA does not have to adhere to, there have been a lot of safety recommendations given by that body that have not been adhered to by the FAA.

If the FAA were solely a safety agency, concerned with safety of this country, they would have implemented some of those recommendations. I really believe that.

Mr. LEVITAS. Yesterday, Mr. Bond testified that Congressman Matsui's bill, which would separate traffic control from other FAA safety functions, is the first step in creating a Government corporation for traffic control similar to the Post Office.

Do you support the Matsui bill and do you see it as a first step in taking the air traffic control system out of the regular Federal bureaucracy and making it an independent Government corporation?

Mr. POLI. We do not support everything in Congressman Matsui's bill, and I think that this is another opportunity by the administrator to take a shot at our organization and the air traffic controllers by saying that it is an attempt by us to support that particular piece of legislation so that air traffic controllers will be separate and taken away from the Government and have the rights to negotiate for different issues.

We support that particular proposal. There are parts of that bill, parts of your bill, sir, and parts of Congressman Goldwater's bill that we support. We feel, as we said in our statement, that a consolidation of all of those good points would produce a safer system.

Mr. LEVITAS. Last week, as you know, the controllers at O'Hare apparently carried out a threat to "withdraw enthusiasm" which resulted in massive congestion and delays. In 1 day, on Friday, there were 616 delays of more than 30 minutes compared to no delays of 30 minutes or more on the Fridays of July 18 and the 25.

Was the O'Hare action authorized or encouraged by the national officers of PATCO?

Mr. POLI. No, sir, it was not, and I am not in a position at this time to admit or acknowledge that there was an action at O'Hare. Our organization, at this time, is presently investigating the situation at O'Hare.

As I have stated before, if there was an action taken by the controllers at O'Hare, and this organization believes that, this organization will take action within its own constitution to discipline those particular members.

We are investigating it at this time. The other point that I would like to make in defense of the controllers at O'Hare, not for what happened if they are guilty, but for what exists at O'Hare right now with the allegations yesterday made by Mr. Bond before this committee and before yourself and myself last night on television.

He stated that it was illegal, that it was criminal that an action was taking place by the controllers in this country to deny the flying public the service that they deserve.

Mr. Levitas, if there is anything criminal going on in Chicago O'Hare, it is because the administrator of this FAA is not doing his job, and I will give you the example. The present staffing levels at O'Hare are such that the staffing requirements dictate that they should have 87 journeyman controllers working in O'Hare.

The chief of the facility has issued a document stating that if we go below 51 controllers at O'Hare, that we are in a critical situation. At this time, today, there are 37 journeyman controllers at

Chicago O'Hare who Mr. Bond characterizes as very, very well paid, some of them almost making $50,000, because they work 6 days a week and in some cases, 10 hours a day.

To compensate for this deficiency, Chicago O'Hare at this time has presently used 12,000 hours of overtime. The suggestion by the representative at Chicago O'Hare has been withdrawn to the regional director at our insistence because of the misinterpretation by Mr. Bond and the FAA to the charges. It has been withdrawn.

But I would like to bring to your attention, Mr. Levitas, that that recommendation was drawn out of a staff study within the FAA for a $7,500 bonus for the controllers at O'Hare. It was done in a staff study by FAA management to encourage controllers to stay at Chicago O'Hare and cope with the problems and for incoming controllers at Chicago O'Hare, a management recommendation.

I would also like to bring to your attention what you did last night on television by saying that the administrator now and in the past does not act, he reacts. He goes to a press conference at the O'Hare Hilton 2 days ago and makes a statement that Chicago is not understaffed. This is a wonderful facility and everything is fine here. They do not need any more controllers. This is a ploy by PATCO to get ready for this so-called strike in 1981.

However, yesterday, he directs the director of the air traffic service to issue a general notice to every terminal facility in this country to attempt to get air traffic controllers to come to Chicago O'Hare with additional benefits for them, and if they cannot check out at O'Hare, they will pay their way there; they will pay their way back.

They are going into the military to look for controllers with radar experience and start them at the grade of GS-9 instead of the normal GS-7 to cope with what they say is now the critical problem at Chicago O'Hare but on 2 days ago, before the press in Chicago, he makes a statement that everything is fine in O'Hare.

Mr. LEVITAS. You referred to the $7,500 bonus issue and have just indicated that that was based upon a management recommendation within the staff of FAA. Does FAA have the legal authority to give the O'Hare controllers the bonus that they are talking about?

It was my understanding that controller salaries are established by law.

Mr. POLI. That is correct, sir. The FAA has the authority to give bonus, but certainly not to that amount. In fact, I would like to state that the Administrator himself, with all the disparaging remarks that he made about the controllers at Chicago O'Hare, approximately 3 weeks ago, issued one of those bonuses to every controller in Chicago of $50 for the excellent work that everyone of them did during a 10-day period when the computer was not working at Chicago O'Hare.

Mr. LEVITAS. I know that Congresswoman Ferraro will have more questions on the subject of the computers and the outages. I wanted to just complete one other aspect of the issues that were raised here yesterday by Mr. Bond and again last night.

He testified yesterday that PATCO has circulated a letter with a strike plan for next March when the contract expires. He also testified that PATCO is forming a strike fund. Are these allegations correct?

Mr. POLI. First of all, sir, if you would take a look at the document that Mr. Bond submitted to the Congress yesterday and the one that he so graciously threw at us last night, the two of us on television, I think that if you look at it very closely, the only thing that that document is is an educational document to our members, first of all, on what has happened in other unions, preparations for strikes, preparations for upcoming negotiations and a plan that, in case the legislation which our union and any Federal union who is worth its salt supports, if the legislation passes to give us the right to strike, that the members would know what it would take.

If you observe that particular document very closely, you will also notice that in the second part of it it states unequivocally that it is illegal for Federal employees to conduct a strike.

Mr. LEVITAS. I have briefly looked through this document that Mr. Bond provided us, and the first part of the document does not refer to strikes as such. It refers to crisis-type situations, what type of committees should be formed, what type of telephone communications should be set up.

Then the second part of the document, as I see it, talks about what constitutes an illegal strike. There is a memorandum in here that is talking about strike relief, background from the management side, and so forth.

I guess the question that I am interested in and I think that Congress would be interested in is, do these documents constitute the basis for a strike plan or an anticipated strike by the controllers next March?

Mr. POLI. No, sir, I do not think so. I do not believe that. I think that Mr. Bond has been on a tirade about PATCO in an attempt to cover his own inadequacies. His first attempt was to take PATCO before the Federal Labor Relations Authority in an attempt to say that the subsistance fund that our organization has is illegal.

The Federal Labor Relations Authority, the U.S. Government portion of the Department of Labor, did not issue a complaint on that particular subject and stated that PATCO had the right to do that and that we were innocent.

He then attempted to say, through these allegations of job actions and other things that PATCO is going to fire a controller in Miami for attempting to vector an airplane through a thunderstorm when we proved beyond a shadow of a doubt that there was not even a thunderstorm there and to management in some of the cases satisfaction that the controller did an outstanding job in that particular case. Him being a vice president of a local with PATCO, I think that is why Mr. Bond attempted to vent his wrath.

Mr. LEVITAS. Thank you, Mr. Poli.

Ms. Ferraro?

[Whereupon, Ms. Ferraro assumed the Chair.]

Ms. FERRARO. Mr. Poli, I am going to take my time for questions, if I might. After our hearings in New York, I was stopped by a reporter who said to me, "Both the FAA and PATCO testified and obviously someone was lying." And he said, "Who do you believe?" And I said as an old trial lawyer, "We have heard experts testimony on both sides of an issue. I am convinced that neither was lying, that each was telling the truth as they saw it." That seems to be what we are getting today, too, and what we got yesterday.

I would like to go back a little bit to your comments with reference to the recommendation by the National Transportation Safety Board. You said that if that were under a separate agency, if FAA only handled safety, that it would have followed through with the recommendations that the National Transportation Safety Board made to FAA.

One of the recommendations, I remember their testifying to yesterday, were shoulder harnesses, and one of the reasons given for not putting that particular safety feature into effect was that it would be very, very costly.

It kind of seems to me like an air bag situation in a car. I mean, it is really not necessary for the safety of the passengers to have those shoulder harnesses.

Do you think if you separate the agencies and you just put safety along without looking at any of the economics into one agency that you might go overboard?

Mr. **Poli**. Ms. Ferraro, I think that that possibility always exists, but I think that in the system that we are talking about, if you look at the Food and Drug Administration with what they do, I think that there are considerations on their part before they make recommendations as to put a company, bankrupt a drug company before they make a decision.

I certainly think that if they make a safety oriented decision that there would be more of a consideration to the possibility of something happening in that area as opposed to what I hear the administrator saying, which he said to both myself and Congressman Levitas last night on television that body count is what dictates changes in safety. It really came down to that.

I constantly hear from the FAA about their safety record, their safety record. Well, I am sure that the captain of the *Titanic* thought that that was a pretty safe ship when he took off, and he did not listen to any warning about icebergs.

I assure you that if one of the near misses, one, that had been cited as a computer failure and they are documented, we have submitted those records to the Congress, that there have been computer failures that were the sole responsibility of a near miss, one of them 100 feet in Denver, Colo.

If those two airplanes would have hit, we would have a new computer tomorrow. That type of mentality in the aviation system cannot be tolerated. I do not believe that there is any room for that.

Ms. **Ferraro**. No. I concur which is the reason why we asked for those meetings up there. I figured that if we can move ahead to prevent a disaster, we are a lot better off. And as a matter of fact, one of the things that I am doing along with Chairman Anderson is going to ask the National Transportation Safety Board to look into the incidents at Kennedy that occurred in July because there are so many system errors that just should not have existed for that 2-week period of time.

So I am going to ask the National Transportation Safety Board to look into that, because I do not feel that our investigating it or

PATCO investigating it or FAA investigating it, we are going to ever come out with the accurate facts.

Mr. POLI. Ms. Ferraro, I would like to bring to your attention, also, because I read the reports on that particular meeting, some of the statements that were made there and then the FAA countering that PATCO saying there is something wrong with the radar, that if the computer portion of the radar goes down, if the controllers do not use it, it is just a ploy by PATCO to attempt to start a slowdown or attempt to put pressure on the Government in anticipation of their contract proposals.

I would like to bring to your attention, in my previous part of my testimony, I stated that in Chicago Mr. Bond gave an award to every controller in Chicago. The reason that he gave that award was because the alphanumerics on the computer was down for 10 days, similar to the situation that they are talking about in New York.

During that 10-day period, they had the peak traffic day for 1980 and did it with minimal amounts of delays, minimal amounts of delays, and the amount of traffic that they worked was 2,900 airplanes in 1 day in Chicago.

So that is not our intention in making those kind of statements. We just want the system to work better.

Ms. FERRARO. Getting back to O'Hare, you said that the optimum amount that you should have working, I believe, was 87. You said 51 are currently employed at that airport and that there are 37 now on duty. Were those the numbers you gave?

Mr. POLI. Well, I am not going to play games with you, Ms. Ferraro, like Mr. Bond does. I am going to give you the entire picture of what happens at O'Hare.

Ms. FERRARO. OK.

Mr. POLI. Their staffing level requires that there be 87 journeyman controllers, fully qualified controllers. The chief, to operate that facility, to operate all the positions, stated in a memo that he must have 51 journeyman controllers.

They presently have 37 or 38. I believe it is 38 journeyman controllers at O'Hare. That is what is causing the massive use of overtime at O'Hare. I am not stating that that is all the controllers that they have.

They have people in the interim process of training, but you cannot accomplish all of the positions in Chicago O'Hare. That is part of the problem.

Ms. FERRARO. Those 38, how many of those are leaving on traumatic leave and the rest of that.

Mr. POLI. Well, we have some of them that have been sick. We have some of them—and there is a policy in O'Hare right now that if you spend 5 years there and there is another facility in the country of a lower density that it will pick you up, that you can request a transfer after 5 years in O'Hare.

The requirements that they put out yesterday in that general notice are waiving some of the training requirements that have existed in the past. The so-called up or out policy. In other words, if you advance in the system and you do not make it at that particular level, you are out. They have waived that for any controller who wants to attempt to check out in O'Hare they have waived that at this time.

Ms. **Ferraro**. Going on to the situation that existed last Friday at O'Hare, you said that your organization was investigating and would take action to discipline those people if you found that it was in fact a job action.

Mr. **Poli**. That is correct.

Ms. **Ferraro**. Would you describe to us what the nature of your investigation is and what is the type of disciplinary action that your union would take if found that that was true?

Mr. **Poli**. Yes, ma'am. First of all, we are investigating right now the allegations being made by the FAA. Our preliminary investigation showed two things happened at Chicago that day.

No. 1, they have a system out there where they can land airplanes most of the time on three runways. The system that they were using that night because of a runway closure, there are six possibilities with that connection, limited it to two possibilities. So they were landing on only two runways.

Just to give you an example of what that does to O'Hare, the acceptance rate at Chicago O'Hare using two runways is 66 an hour. They can land 66 airplanes an hour at O'Hare.

Between 5 and 6, 87 airplanes at Chicago are supposed to land in 1 hour, 87. So that automatically promotes delays because they cannot go to the triple system.

During that night at Chicago, being the most difficult airport in the country when something like this happens, there was a wind shift and a runway change where they had to completely stop the operation and reverse it and go to the other side of the airport to land into the wind. That happened.

At 10:05 at Chicago, they abandoned the tower. There was a bomb scare, and they had to leave the tower and evacuate it in Chicago. Those are the preliminary things that we found.

We realize that the letter that was provided by the facility representative that the FAA ran with that and stated that this was a threat. To alleviate any problems in that area, our organization has demanded that that individual withdraw that letter and it has been done.

If we find that there was an action taking place there, No. 1, we can take action to put that local in trusteeship and take it away as a local of our organization, and No. 2, through the constitution of PATCO, discipline those people to eliminate them from membership in our organization.

Ms. **Ferraro**. The final question I have, and that again, reverts back to my hearing, Mr. Amato testified on behalf of PATCO.

Mr. **Poli**. Yes, ma'am.

Ms. **Ferraro**. And one of the things he said during the course of his testimony, and he made a lot of the same points you did, but he said, "I am, therefore, calling upon all air traffic controllers of the New York metropolitan area to begin immediately to review and follow all FAA procedures and work with extreme caution."

Now, you have been sitting through these hearings, and that has been brought up. It has been said that, well, they are supposed to do that anyway, and that is one of the things I asked if they were calling for a slowdown.

What does that mean to you?

Mr. **Poli.** A slowdown?

Ms. **Ferraro.** No. His statement.

Mr. **Poli.** What his statement means to me was that he was advising the controllers to work with caution. I think his statement relates back to the problems that they have had with the automated system and the common IFR room, alphanumerics.

I certainly understand and I was informed of that particular statement after it was made by a regional vice president. That it alarmed you and it concerned you that Mr. Amato was calling for a slowdown.

I think if you look at the traffic in New York, there is not a slowdown taking place at all. The statement itself is warning controllers in that particular area that there have been allegations made in the common IFR room which Congressman Burton referred to about problems with tracks disappearing.

We had a case up there where the FBI was in our facility and we went before the grand jury. There have been no indictments. I think that he was warning the people about that situation.

But once and for all, I would like the support of the Congress, our organization, and I think that it is time that we do address the problem of what does going by the book mean.

Everytime a controller states that I am going by the book all of a sudden everybody's hunches gets up and says they are going to run a slowdown. I would like a congressional investigation of a facility of the magnitude of Chicago O'Hare or maybe the common IFR room and not for an hour or 2 hours, but for an entire week to see what it takes to run an approach control and what they mean by going by the book.

The FAA regulations state that aircraft on final approach to an airport must have 3 miles separation. The FAA can and has in many cases, gone as far as to discipline a controller who has ended up with 2 miles or 2½ miles on final at an airport.

If, in the case of Chicago O'Hare which we can prove to you, there is an internal FAA document that states unequivocally that unless Chicago controllers work at a 150-percent efficiency, we will incur, at minimum, half an hour delays.

If they work at only 100 percent and not 150, to insure that the traffic gets in, there is no way that we can operate with less than half an hour delays. So I think it is about time that we really take a look at this problem and see what it takes to land airplanes in this country.

Ms. **Ferraro.** Let me see if I understand what you are saying. You are saying that ordinarily the book says you have to keep them 3 miles apart, that if they are operating at 2 or 2½ miles apart, that technically they are in violation.

Mr. **Poli.** Yes, ma'am. I can show you a situation where a controller in Dallas-Fort Worth had two airplanes on final at 2½ miles apart, 2¼ miles apart——

Ms. **Ferraro.** Just let me carry that one step further. Is that then correlated to the productivity figure that you just gave us? If they are operating at a tighter level, that they are working at a higher level of productivity, is that what you are telling us?

Mr. **Poli.** Absolutely.

Ms. **Ferraro**. And so therefore, they cannot go by the books if they want to keep air traffic moving.

Mr. **Poli**. If you look into the O'Hare records, in other words, if there would just be a complete examination of the O'Hare records, inasmuch as I told you when they are on a two runway operation, that legally, you can only land 66 airplanes an hour.

There are times when 87 of those airplanes get down, and there are no delays at Chicago O'Hare.

Ms. **Ferraro**. So that what you are saying is that you are operating not quite to the letter of the law, but you are operating to a higher level of productivity in order to keep traffic moving.

Mr. **Poli**. That is absolutely correct.

Ms. **Ferraro**. OK. So that goes then to the promotion of, which is where I was before, the promotion of the industry.

Mr. **Poli**. Well, I am afraid I have to disagree with you on that. I think that the FAA, as a regulatory agency, and their employees operating as air traffic controllers, has the responsibility, from an enforcement procedure, if they feel that something is operating improperly to enforce disciplinary action on those people or action within the courts against our organization if they feel it is us prompting these people to do that.

As far as from a promotional aspect, I guess that you could interpret it that way, but I do not see the significance there. I really do not.

Ms. **Ferraro**. Well, you see, my point is that, you know you are concerned about the safety, and you are concerned about that the industry, not the profits of the industry, but the function of the industry as part of the transportation system of this country.

And therefore, sometimes you can sacrifice a bit of the safety standards to the point that we were just discussing, you know, 2½ miles instead of 3-mile differentiation between the planes and operating at 150 percent of productivity rather than 100 in order to satisfy the needs of the transportation section of economy.

Mr. **Poli**. Yes, ma'am. I agree with that statement but I did not get to finish the story of the individual in Dallas-Fort Worth that was operating with 2½ miles. He was downgraded, sent to another facility for using a 2½-mile separation on final.

We had to fight that case in the courts to get the man his job back. We won it ultimately. The organization represented that individual, and we got his job back. But that is the dilemma the controllers face on a daily basis in this country, and our organization faces.

Ms. **Ferraro**. What was the basis of the decision that got the controller's job back?

Mr. **Poli**. The basis of the decision? The basis of the decision I could supply to you, but it was stated in that particular situation that they did not feel that the individual was involved in an unsafe act, that it was not intentional on his part to get the 2½-mile separation, and in many cases, they had operated with 2½ miles separation in that facility and it did not warrant the punishment that he received.

Ms. **Ferraro**. I appreciate your testimony. It has cleared things up.

Mr. Hutchinson?

Mr. HUTCHINSON. I would like to carry on a little bit further. You were talking about 2½ miles instead of the 3 mile, and yesterday, the Administrator, Mr. Bond, talked about going from a 3 mile to a 6 mile and that he obviously had problems with that, and he said in certain instances that became a deliberate slowdown.

Have you remarked on that?

Mr. POLI. No; I have not remarked on that. I think there is no question. If an individual was intentionally running airplanes 6, 8, 10 miles apart, that there would be some suspicion to the FAA. But the things that Mr. Bond fails all the time in his testimony when he takes shots at our organization or fails when he talks about his employees is the fact that if you are operating with a heavy jet, a widebody behind a smaller one or in front of one, the separation automatically increases to four and in some cases to five. He does not cite that that happens.

He only picks the most extreme situation where one airplane was 18 miles behind another one, which does not happen very often in Chicago.

Mr. HUTCHINSON. Well, he referred, too, that, you know, of an instant happening, and he referred to somebody in some position at O'Hare, I think he was referring to that all of a sudden the separation became a slowdown and then all of a sudden the word came down to put it back together, and they started catching up.

What would cause something like that? Who would be passing the word to do something like that?

Mr. POLI. Well, certainly Mr. Bond thinks that I am passing the word because I am the president of PATCO. But it could be the local. It could be regional. It could be national. I am talking about what could happen. It could be somebody else that is doing it.

But he intends to always say that it is PATCO. In other words, I am not denying that the possibility exists that that happened.

Mr. HUTCHINSON. Well, do you defend that?

Mr. POLI. No; I do not defend that, and I unequivocally state that we had absolutely nothing to do with involving ourselves in condoning, participating in or calling for any kind of action in Chicago at all, except a completely normal operation.

Mr. HUTCHINSON. Well, anyplace else other than Chicago?

Mr. POLI. Anyplace else other than Chicago?

Mr. HUTCHINSON. Yes. I mean, is it just Chicago?

Mr. POLI. No; anywhere in this country that is the position of this organization.

Mr. HUTCHINSON. I see. Well, I have not had a chance to look at the document that Mr. Bond provided the committee with yesterday. It is rather voluminous. Is there anything in that which would explain to controllers how you, just at a moment's notice, can effect a slowdown?

Mr. POLI. No, sir, I do not believe it does. I do not think slowdowns are addressed in that document at all.

Mr. HUTCHINSON. He made some allegations yesterday which were rather serious, and again, I missed Mr. Levitas' questions on those. But he indicated that this document has been circulated among your membership, I guess.

Mr. POLI. That is correct.

Mr. HUTCHINSON. For the purpose of preparation for a strike or job action or however you wish to refer to it.

Mr. POLI. That was Mr. Bond's statement, yes, sir.

Mr. HUTCHINSON. I understand that was his statement, and also that a strike fund, call it what you will, was being developed. What was your answer to that? Because I missed that.

Mr. POLI. First of all, the strike fund that Mr. Bond talks about, the word "strike" nowhere appears in that particular resolution. It does not. It is a subsistence fund.

Mr. HUTCHINSON. What would the purpose of a subsistence fund be?

Mr. POLI. There are a number of reasons why individuals could draw from that fund, being fired by the FAA for what we feel was an improper reason. It is to provide for the future if the right to strike ever does pass. We will have the fund in existence.

Mr. HUTCHINSON. Would it be a strike fund then?

Mr. POLI. It certainly would if the right to strike passed for Federal employees, certainly it would be a strike fund, if that passed it would.

But the thing I would like to bring to your attention, sir, is that this particular subject on that fund has been litigated by the Department of Labor and through the FLRA, and we have won the case that PATCO has a right to have that fund.

Mr. HUTCHINSON. I am not denying your right. I am questioning what he had to say and whether or not or what the real purpose of the fund might be.

How long has the fund been in existence?

Mr. POLI. Approximately 3 years.

Mr. HUTCHINSON. When was this document circulated that he gave to the committee yesterday?

Mr. POLI. I think approximately April 15, around the date that is listed on the cover sheet, yes, sir.

Mr. HUTCHINSON. This year. Let me ask, in the public sector, as you stated earlier that the strikes are illegal in your instance.

Mr. POLI. Yes, sir.

Mr. HUTCHINSON. Have you noticed whether it is in State law or otherwise that the illegality in the law of a strike against the public, its existence, that it really has not had any effect on whether or not there was a strike.

Mr. POLI. In a lot of cases, yes, sir, I agree with you.

Mr. HUTCHINSON. Inasmuch as you have circulated a document telling the membership maybe what they need to be prepared to do in case you had the right to strike and that you have a fund that could become a strike fund, what would ease our minds that there is no strike in the offing whether it is legal or illegal?

Mr. POLI. I think that that is a question that is very difficult to answer. Certainly the allegations made by Administrator Bond, the evidence of PATCO—and these are not the only documents that we have circulating in the field about strikes, every time there is one. The case of the strike that is taking place right now in Prince Georges County, I am sure that I will get all the documentation on that strike and I will circulate it among my members. I will, because the members are interested in this particular type of situation as to what goes on with labor unions in their conflict with management.

I just believe that PATCO has not gone on strike. PATCO has not made a statement that we are going on strike. I do not feel that there are any documents to substantiate that. I have made that statement last night on television. I have made it here before this committee that there is no intention by PATCO to go on strike in 1981.

Mr. HUTCHINSON. How about an informative job action?

Mr. POLI. An informative job action?

Mr. HUTCHINSON. Yes.

Mr. POLI. No, sir, there is no intention on our part to have an informative job action, a work to rule or anything of that nature in 1981.

Mr. HUTCHINSON. In 1981?

Mr. POLI. That is correct.

Mr. HUTCHINSON. But you would anticipate it at some other time?

Mr. POLI. If it becomes legal, yes, I would anticipate that.

Mr. HUTCHINSON. You would anticipate that there would be job actions or strikes if you had the right.

Mr. POLI. Well, I do not think the job actions will probably ever become legal, but I think that if we ever get the right to strike, I would anticipate that the possibility existed. I think that the right to strike inasmuch as I tell you that we have researched it, I have studied it up in Canada where the air traffic controllers do have the right to strike, and it has to be used responsibly.

Just because you have the right to strike, your first act is not to go out and call a strike. I feel that our organization has proven, in the past, that we can work within the system, that we have negotiated what we feel is the best contract in the Federal sector.

We will continually stress for more salaries, for a reduced workweek, for the right to strike, but I feel that our record indicates that we have been responsible in that area.

Mr. HUTCHINSON. You advocate that you should have the right to strike, is that correct?

Mr. POLI. Absolutely. Yes, I do.

Mr. HUTCHINSON. Why, if you are going to be responsible and not use it, would you need the right?

Mr. POLI. Because, first of all, you have to understand that the system that we operate right now within the Federal sector, and I have testified to this point before the Congress, that it is a collective begging process. Anytime management states that we do not want to give it to you, what can you do about it? What actually happens to you at that time?

We do not have the right to negotiate salaries. We do not have the right to negotiate hours of work. We do not have the right, as an organization, to be involved in the legitimate safety problems that exist within the facility.

We have the right to put input as an organization, but we do not have the right to participate. That is why you constantly see our organization before this particular forum and before the Congress to inform the Congress and the press and the aviation community of the problems we see at that time.

Mr. HUTCHINSON. You wish to sit down at the table with management and decide upon how the rules will be laid down and how it is to be run, is that correct?

Mr. POLI. Do I wish to do that?

Mr. HUTCHINSON. Your organization.

Mr. POLI. I think that you are trying to say that I want to sit down and tell the FAA how the FAA should be run. No, I do not. But I certainly want to sit down with management when I see a system that is deteriorating and a computer system that is failing on a continual basis in this country and have some input to the changing of that particular problem.

Mr. HUTCHINSON. How does your position differ from Mr. Wurf who says very, very bluntly that he wants to be a partnership in the decision of how Government is run.

Mr. POLI. I do not think I want to be in a partnership in the decision of how the Government is run. But in the areas that affect my members, I feel that I have to be a partner in those decisions and in areas that affect not only my members but the flying public, I feel that I have to be a partner in those decisions. I want that responsibility.

Mr. HUTCHINSON. I have no other questions.

Ms. FERRARO. Mr. Fary?

Mr. FARY. Thank you, Madam Chairman.

In my absence, apparently you have gone over the air traffic controller situation; however, let me just ask you one question on the safety angle. I would like to start my questioning by agreeing with you that our traffic controllers deserve a great deal of credit for keeping the airways safe and for handling so much responsibility so well. I wish the FAA would hire more controllers to make the airways safer.

However, a week ago it took me several hours to get from Minnesota to Chicago because of what appeared to be a wildcat strike at O'Hare. Do you think that such slowdowns enhance our safety? What effect do you think these job actions have on the public confidence in air safety?

Mr. POLI. First of all, sir, I do not advocate, do not condone, or do I participate in a call for job actions. I am not convinced at this time, as I stated to the chairman, that there was a slowdown that took place at Chicago or any type of job action.

Mr. Bond has made those allegations. We are in the process of investigating that. As far as air safety is concerned, or as far as any kind of confidence in the system that the public has, I do not see why that would deter their confidence in the system, because if a job action was happening or if there was a slowdown, the one thing that the public does not understand is that the airplanes are further apart from each other. They are not as close as they normally are.

So I do not think that that particular portion of it is a problem. As far as affecting the service itself, yes, it is. And I realize how that affects the flying public, and I realize that after reading Mr. Bond's allegation that you more than likely were irate with the air traffic controllers and probably with this organization, but I would like you to give us the opportunity to investigate that, and then I will report back to this committee what we found happened in

Chicago, because it is not the first time that that situation has happened in Chicago where there are those kind of delays, and there certainly was not any allegations of any job actions at that time.

Mr. **Fary**. Thank you very much. I would appreciate the information.

Ms. **Ferraro**. Thank you, Mr. Fary.

I just have two other things. And that is just picking up a bit on Mr. Hutchinson's question about the subsistence fund that you sent out to your membership. In article 2 section 1, it says, "In order to receive benefits, a member must be (b) be suspended and/or dismissed as a direct result of his or her participation in a nationally sanctioned job action."

Then I went back to the definitions and tried to find the definition of national sanctioned job action. Would you define that for me because it was not listed.

Mr. **Poli**. The definition is not there. A nationally sanctioned job action is an action that would be taken to be legal. I mean, there is no question that you cannot have a national sanctioned job action at this particular time.

In other words, if we had the right to strike and we said that we were going to go on strike, that would be a nationally sanctioned job action.

Ms. **Ferraro**. The other thing is that Mr. Goldwater was unable to stay for your testimony, and he did have several questions he wanted to ask. He will be submitting them to you and would request that you submit the answers to the committee in writing.

Thank you very much for your testimony.

Our next witness is Lloyd E. Frisbee. Mr. Frisbee is from the National Research Council.

Mr. Frisbee, the full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT BY LLOYD E. FRISBEE, MEMBER, NATIONAL RESEARCH COUNCIL, COMMITTEE OF FAA AIRWORTHINESS CERTIFICATION PROCEDURES

Mr. Chairman, I am pleased to have this opportunity to present views to your subcommittee on means for enhancing the safety mission of the Federal Aviation Administration.

I am here today to testify on behalf of the National Research Council's Committee on FAA Airworthiness Certification Procedures. Mr. George Low, chairman of our committee, regrets that he was unable to attend the hearing because of a previous commitment. He asked that I appear to present views of the committee and to outline for you the principal findings of the committee, which are set forth in more detail in its recent report "Improving Aircraft Safety."

Our committee was formed as the result of a request from the Secretary of Transportation in December 1979 to Dr. Philip Handler, President of the National Academy of Sciences, asking the National Research Council to assess the adequacy of the Federal Aviation Administration's policies and procedures for certifying the airworthiness of commercial transport aircraft.

Even though the safety record of the U.S. aircraft and airline industries is excellent, a serious accident, such as the crash in Chicago in May 1979, is a cause for concern about our systems and raises the question if there are ways in which improvements might be made.

In response to this concern, Secretary Goldschmidt turned to the National Research Council to establish an independent review committee. As many of you know, the Research Council is the principal operating agency of the National Academy of Sciences and the National Academy of Engineering, each of which was established to provide scientific and technical advice to the government. Although not a government agency, the National Academy of Sciences was chartered by the Congress in 1863 as an independent, non-profit organization to "whenever called upon by any department of the Government, investigate, examine, experiment and report upon any subject of science or art." (The last phrases are from the Act of Incorporation.) Members who serve on Research Council committees, volunteer their services and receive no compensation for their time. Reimbursement is made for expenses incurred in traveling to meetings. Committee members are selected by the Research Council for their expertise and independence. Committees also represent an appropriate balance of viewpoints on the subjects under study.

The chairman of the committee, George Low, is now president of Rensselaer Polytechnic Institute. Previously, he was manager of the Apollo spacecraft program and, subsequently served as deputy administrator of the National Aeronautics and Space Administration. For more than a year I have been retired from the Lockheed California Company, where I was Vice President and General Manager, Engineering and Operations. In addition to Mr. Low and myself, the committee had three academic authorities in aeronautical engineering; one other former aircraft executive with design and production experience; a former airline executive in charge of aircraft maintenance; two members who were professional airline pilots; an attorney in private practice who specializes in aviation law and regulations; a transportation economist; and two former government officials—one, a former administrator of the FAA, and the other, a former chief of investigations of the National Transportation Safety Board.

While the safety of flight involves the flight crews, the control of air traffic and the quality or airworthiness of the machine itself, the committee was charged to focus its attention on the airworthiness of the aircraft. Its study addressed one central concern: how well the FAA discharges its airworthiness responsibility with respect to large commercial transport aircraft. The group examined in detail how the FAA sets technical standards for, and applies those standards to, the certification of the design, production and continuing maintenance of the large transport aircraft that are flown in revenue service by the passenger airlines of our nation.

The preface to the committee's report describes how the committee went about its work, and the representatives of industry and government with whom it met. The list includes the FAA, three major aircraft manufacturers, three air carriers, representatives of the National Transportation Safety Board, the National Aeronautics and Space Administration, and representatives of the aviation authorities of the governments of Great Britain and France. All of these groups gave us a great deal of time and excellent cooperation. The committee's review also included a considerable amount of written materials and accident reports, including the General Accounting Office's report issued earlier this year on improving the FAA's ability to deal with safety hazards.

In accordance with the Secretary's concern for a prompt response, the study was completed in less than six months and a report was released on June 26, 1980, after an independent review by a group wholly separate from our committee, as is the case with all Research Council reports. In other words, our report was subject to "peer review."

Our major finding is that the safety record of the manufacturers of large aircraft and the domestic airlines is excellent. We found nothing that should undermine public confidence in commercial air travel. Our concerns and recommendations were addressed to the desirability and possibility of making a very good system even better.

Our committee found shortcomings in the FAA as an organization and in the way it functions with respect to licensing passenger airplanes for service and the way it approves maintenance procedures carried out by the airlines.

The recommendations deal with such matters as: FAA personnel and organization, use of designated engineering representatives, the process of type certification of large commercial airplanes, timeliness of rule making, the philosophy of aircraft design, and the public access to decisions about new aircraft. Other topics covered by the committee's recommendations are quality assurance in production, surveillance of maintenance, licensing of maintenance personnel, reassignment of FAA personnel, the continuing role of the aircraft manufacturer in flight safety matters, improved information systems, and the reporting of damage to primary structures in aircraft. With regard to the FAA's leadership and advice, the committee was concerned with the desirability of advisory groups, the selection of the administrator and deputy administrator of the FAA, and with formal acknowledgment of industry responsibility for safety.

I cannot in this brief presentation provide you with full information on each of our recommendations. I believe you have our report, which gives the rationale for our findings and recommendations. I commend it to you for more careful reading.

However, it is the opinion of the committee that the following areas may relate to the issues addressed in your hearings today and warrant special attention:

First, the committee believes that the FAA needs to improve the quality and competence of its technical staff and to encourage more initiative. We believe this objective can be achieved only with significant organizational changes. Chief among these changes is our recommendation to centralize many of the engineering functions, now dispersed among the FAA regional offices, to a single location.

The second has to do with the substance of aircraft design practice. Specifically, we conlcude that aircraft can be designed to be more tolerant of damage, and we recommend an improvement in design certification practice that should increase the chance that aircraft can land safely even after some structural damage has been sustained.

Third, as a regulator of high technology machines and operations, the FAA would benefit from continuity of highly competent, dynamic leadership. It would also be helped by a group of experts, reporting to the administrator, to provide advice on the adequacy of technical programs and on application of new technologies to the work of the FAA. What is more, the committee recommends creation within the Department of Transportation of a board, reporting to the Secretary of Transportation, to provide advice on major FAA safety and policy matters and to recommend candidates for the positions of administrator and deputy administrator. The committee viewed this proposed aviation safety policy board as a group to help the Secretary of Transportation address the kinds of over-arching policy issues that are of concern in the oversight of the FAA. Such issues might include, for example, whether or not the FAA has struck the appropriate balance between allocating resources for air traffic control versus aircraft airworthiness, or between its dual roles of promoting safety and encouraging civil aeronautics or between aggressive inspection and monitoring techniques and dramatic enforcement and punishment practices.

I have provided more detail on the recommendations for a safety policy board because it relates to oversight of the FAA. Your subcommittee is concerned today with proposed changes in the status of the FAA and with suggested division of the responsibilities it now holds as a single agency. These are difficult questions to address, and were not studied by our committee. I can only hope that my remarks have helped you understand parts of the FAA and ways in which we think its work can be improved.

Our commitee also identified a number of other matters warranting study that we were not able to explore. They are outlined in the report in Mr. Low's letter to Dr. Handler, and include examination of other elements of aviation safety, the certification of engines, problems of an aging airplane fleet, FAA surveillance of subcontractors and suppliers, and certification of aircraft produced outside the United States and used by American carriers.

At this time I would like to point out that there are few, if any essential conclusions that we reached that were not also reached by one or more of several other groups that have addressed these issues earlier. Examples are a number of Congressional investigations, reports by the General Accounting Office and the National Transportation Safety Board, and studies commissioned by previous secretaries of Transportation and FAA administrators. Indeed, we have pointed out shortcomings that the FAA leadership and officials of the regulated industry have already recognized, at least in general terms.

In making our own recommendations, we attempted to address the underlying causes and not the surface symptoms of the problems we found. Our recommendations present a balanced strategy that should be applied as a package, because individual recommendations alone cannot do the job.

Our committee is an independent group of experts from disparate backgrounds offering diverse perspectives. All of us favor a strong U.S. aviation community, and in serving on this committee, each of us accepted a responsibility to help insure that safety of the flying public. Our conclusions and recommendations were unanimous.

Whether or not your subcommittee takes further steps to approve the proposed legislation under consideration today, I want to emphasize the importance of the findings of our report and the urgent need for implementation of our recommendations at the earliest possible date.

BIOGRAPHICAL BRIEF

Lloyd E. Frisbee,* now Vice President and General Manager—Engineering and Operations for the Lockheed-California Company, was appointed to that position

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*(Retired from Lockheed, June, 1979.)

March 1976. At this time, the Board elected him a Corporate Vice President. He continues to report directly to the President of the Lockheed-California Company.

He moved into the newly created post from his former assignment as Vice President—Engineering. In his new position, in addition to his former responsibility for all company-wide engineering and research and development activities, his area of responsibility has been expanded to include the Manufacturing, Materiel, Flying Operations and Quality Assurance Branches.

Prior to being named Vice President—Engineering, he held the position of Vice President and Director of Commercial Engineering, with responsibility for all commercial engineering activities. In this position, he supervised design, engineering and testing of the L-1011 TriStar jetliner.

His background includes more than 35 years of commercial and military aircraft engineering experience in the aerospace industry, the last 23 with Lockheed.

Frisbee came to the Burbank-based facility in 1969 after 16 years with the Lockheed-Georgia Company, where during the last 5 years of his tenure he served as the head of the engineering team that designed and developed a series of military aircraft including the C-5A Galaxy, the world's largest airplane and the C-141 Starlifter, and which developed the C-130 Hercules military turbo-prop transport and the Lockheed JetStar business jet.

Following his graduation from the University of Washington with a degree in aeronautical engineering, Frisbee held research and aerodynamics positions with the Boeing Company from 1940 to 1945, assisting in the development of the B-17 and B-29 bombers, as well as several experimental aircraft including a Navy long range flying boat. While in the Flight Research and Aerodynamics organization at Boeing, he also helped to develop and establish new techniques for flight testing of high-altitude aircraft.

Before joining Lockheed in 1953, he served for eight years in engineering executive positions in Northrop Aircraft. As a member of the experimental organization, he helped develop the P-61 and F-89 Night Fighters, the B-35 Flying Wing and the B-49 bomber, as well as several experimental aircraft.

He joined Lockheed-Georgia in 1953 as Chief of Engineering Flight Test.

Affiliations: Associate Fellow, American Institute of Aeronautics and Astronautics. Member of Technical Board and Aerospace Council of Society of Automotive Engineers—1974-1977.

Other activities: Member of NASA Research and Technology Advisory Council Subcommittee on Aviation Safety Reporting System. 1975-present. Served on USAF Advisory Committee on Advanced Materials—1971-72. Chairman of the Georgia Tech-Industry Advisory Committee—1967-69. Member of the State of Georgia Science & Technology Commission—1968-69.

Ms. **Ferraro**. Please proceed.

TESTIMONY OF LLOYD E. FRISBEE, COMMITTEE ON FAA AIRWORTHINESS CERTIFICATION PROCEDURES, NATIONAL RESEARCH COUNCIL, ACCOMPANIED BY SUSAN PERRY, STAFF OFFICER, AND BERNARD DOYLE, COMMITTEE MEMBER

Mr. **Frisbee**. Ms. Ferraro, I am pleased to have this opportunity to present views to your subcommittee on means for enhancing the safety mission of the Federal Aviation Administration.

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Although not a Government agency, the National Academy of Sciences was charged by the Congress in 1863 as an independent nonprofit organization to, "whenever called upon by any department of the Government, investigate, examine, experiment, and report on any subject of science or art". The last phrases are from the Act of Incorporation.

Members who serve on research council committees volunteer their services and receive no compensation for their time. Reimbursement is made for expenses incurred in traveling to meetings. Committee members are selected by the research council for their expertise and independence. Committees also represent an appropriate balance of viewpoints on the subject under study.

The chairman of the committee, George Low, is now president of Rensselaer Polytechnic Institute. Previously, he was manager of the Apollo spacecraft program and subsequently served as deputy administrator of the National Aeronautics and Space Administration.

For more than a year, I have been retired from the Lockheed California company where I was vice president and general manager for engineering and operations. For the record, I have submitted a copy of my résumé.

In addition to Mr. Low and myself, the committee had three academic authorities in aeronautical engineering, one other former aircraft executive with design and production experience, a former airline executive in charge of aircraft maintenance, two members who were professional airline pilots, an attorney in private practice who specializes in aviation law and regulations, a transportation economist and two former Government officials—one a former administrator of the FAA and the other a former chief of investigations with the National Transportation Safety Board. He is sitting to my left.

While the safety of flight involves the flight crews, the control of air traffic and the quality of airworthiness of the machine itself, the committee was charged to focus its attention on the airworthiness of the aircraft.

Its study addressed one central concern, how well the FAA discharges its airworthiness responsibility with respect to large commercial transportation aircraft. The group examined in detail how the FAA sets technical standards for and applies those standards to the certification of the design, production and continuing maintenance of the large transport aircraft that are flown in revenue service by the passenger airlines of our Nation.

The preface to the committee's report describes how the committee went about its work and the representatives of industry and Government with whom it met. The list includes the FAA, the three major aircraft manufacturers, three air carriers, representatives of the National Transportation Safety Board, the National Aeonautics and Space Administration and representatives of the aviation authorities of the Governments of Great Britain and France.

All of these groups gave us a great deal of time and excellent cooperation. The committee's review also included a considerable amount of written materials and accident reports, including the General Accounting Office's report issued earlier this year on improving the FAA's ability to deal with safety hazards.

In accordance with the Secretary's concern for prompt response, the study was completed in less than 6 months and a report was released on June 26, 1980, after an independent review by a group wholly separate from our committee, as is the case with all research council reports. In other words, our report was subject to "peer review."

Our major finding is that the safety record of the manufacturers of large aircraft and the domestic airlines is excellent. We found nothing that should undermine public confidence in commercial air travel.

Our concerns and recommendations were addressed to the desirability and possibility of making a very good system even better. Our committee found shortcomings in the FAA as an organization and in the way it functions with respect to licensing passenger airplanes for service and the way it approves maintenance procedures carried out by the airlines.

The recommendations deal with such matters as FAA personnel and organization, use of designated engineering representatives, the process of type certification of large commercial airplanes, timeliness of rulemaking, the philosophy of aircraft design and the public access to decisions about new aircraft.

Other topics covered by the committee's recommendations are quality assurance in production, surveillance of maintenance, licensing of maintenance personnel, reassignment of FAA personnel, the continuing role of the aircraft manufacturer in flight safety matters, the improved information systems and the reporting of damage to primary structures in aircraft.

With regard to the FAA's leadership and advice, the committee was concerned with the desirability of advisory groups, the selection of the administrator and deputy administrator of the FAA, and with formal acknowledgement of industry responsibilty for safety.

I cannot, in this brief presentation, provide you with full information on each of our recommendations. There were 17 of them. I believe that you have a report, the blue report which many of you have been waving around this morning, and it gives the rationale for our findings and recommendations. I commend it to you for careful reading.

However, it is the opinion of the committee that the following areas in the report may relate to the issues addressed in your hearings today and thus warrant special attention.

First, the committee believes that the FAA needs to improve the quality and competence of its technical staff and to encourage more initiative. We believe this objective can be achieved only with significant organizational changes.

Chief among these changes is our recommendation to centralize many of the engineering functions now dispersed among the FAA regional offices to a single location.

The second has to do with the substance of aircraft design practice. Specifically, we conclude that aircraft can be designed to be more tolerant of damage, and we recommend an improvement in design certification practice that should increase the chance that aircraft and land safely even after some structure damage has been sustained.

Third, as a regulator of high technology machines and operations, the FAA would benefit from continuity of highly competent, dynamic leadership. It would also be helped by a group of experts reporting to the administrator to provide advice on the adequacy of technical programs and on application of new technologies to the work of the FAA.

What is more, the committee recommends creation within the Department of Transportation of a board reporting to the Secretary of Transportation to provide advice on major FAA safety and policy matters and to recommend candidates for the position of administrator and deputy administrator.

The committee viewed this proposed aviation safety policy board as a group to help the Secretary of Transportation address the kinds of overarching policy issues that are of concern in the oversight of the FAA.

Such issues might include, for example, whether or not the FAA has struck the appropriate balance between allocating resources for air traffic control versus aircraft airworthiness or between its dual roles or promoting safety and encouraging civil aeronautics or between agressive inspection and monitoring techniques and dramatic enforcement and punishment practices.

I have provided more detail on the recommendations for a safety policy board because it relates to oversight of the FAA. Your subcommittee is concerned today with proposed changes in the status of the FAA and with suggested division of the responsibilities it now holds as a single agency.

These are difficult questions to address and were not studied by our committee. I can only hope that my remarks have helped you understand parts of the FAA and ways in which we think its work can be improved.

Our committee also identified a number of other matters warranting study that we were not able to explore. They are outlined in the report and Mr. Low's letter to Dr. Handler and include examination of other elements of aviation safety, the certification of engines, problems of an aging airplane fleet, FAA surveillance of subcontractors and suppliers and certification of aircraft produced outside the United States and used by American carriers.

At this time, we would like to point out that there are few, if any, essential conclusions that we reach that were not also reached by one or more of several other groups that have addressed these issues earlier.

Examples are a number of congressional investigations, reports by the General Accounting Office, and the National Transportation Safety Board, and studies commissioned by previous secretaries of Transportation and FAA administrators.

Indeed, we have pointed out shortcomings that the FAA leadership and officials of the regulated industry have already recognized at least in general terms.

In making our own recommendations, we attempted to address the underlying causes and not the surface symptoms of the problems we found. Our recommendations present a balanced strategy that should be applied as a package because individual recommendations alone cannot do the job.

Our committee is an independent group of experts from disparate backgrounds offering diverse perspectives. All of us favor a strong U.S. aviation community, and in serving on this committee, each of us accepted a responsibility to help insure the safety of the flying public. Our conclusions and recommendations were unanimous.

Whether or not your subcommittee takes further steps to approve the proposed legislation under consideration today, I want to emphasize the importance of the findings of our report and the urgent need for implementation of our recommendations at the earliest possible date.

And that concludes my prepared testimony.

Ms. **Ferraro**. Thank you, Mr. Frisbee.

I want to tell you, first of all, that I think it is terrific that the National Research Council puts together people like you and the people at the table to participate and volunteer your time to do this service, because I think it is invaluable and to have the opportunity to have your expertise given to the Government, I think, is very laudible, and I appreciate it.

Mr. **Frisbee**. Thank you.

Ms. **Ferraro**. I do have a few questions. You have heard the testimony today with reference to being a safety regulator and in conjunction with being a promotor for the aviation and civil aeronautics in this country.

Do you think that the FAA's effectiveness as a safety regulator is impaired by the agency's mandate to promote aviation? Did your panel find that the promotional mandate has been a problem in the certification of passenger aircraft?

Mr. **Frisbee**. Our panel dealt only with the effectiveness of the FAA with respect to the certification process itself.

Ms. **Ferraro**. What did they find with reference to the effectiveness?

Mr. **Frisbee**. The 17 recommendations summarized the findings of the committee. They found generally that the system is excellent, as we have said, but that there are areas of improvement which I just described.

Ms. **Ferraro**. But you did not specifically see any impairment because of their dual function as a promotor.

Mr. **Frisbee**. Because of the promotional aspect?

Ms. **Ferraro**. That is right.

Mr. **Frisbee**. We did not investigate that and did not find any substantiation for that being a problem.

Ms. **Ferraro**. Your report proposes improvement in design certification practices to increase the chance that an aircraft land safely after incurring some structural damage. Could you elaborate on FAA's existing certification standards on this issue and how the panel thinks these standards should be changed?

Mr. **Frisbee**. Yes. We have a specific recommendation that would change the rules to require that an aircraft, whenever structural damage occurred which, in itself does not cause the airplane to fail in flight, such as a wing falling off, whenever damage of that kind occurs, that there should be provision to allow the airplane to return and land safely.

The present certification process involving aircraft failures involves a statistical analysis called failure modes and effects that investigates the possibility for failure of primary parts of the airplane, or the reliability of primary parts of the airplane which can be satisfied by two kinds of design analysis. One is called fail-safe and the other is called safe-life.

Fail-safe means that there has to be redundant structure to pick up the load if a major piece of the structure fails. There has to be a crutch structure. Safe-life means that a piece of the airplane that cannot have a reduntant part, like a landing gear strut, must be tested to the extent that you can show that it will last for a certain life time. That life time is described and the number of life times that it has to be tested to is a large multiple of the actual life that the unit will be approved for.

Wing spars and landing gear struts are safe-life parts. A turbine blade or a turbine disc in an engine is a safe-life part. They have to be tested to many, many life times under very rigid and austere conditions that go well beyond the limits that they will ever see in actual operation.

Then a safe life is assigned, and those parts have to be replaced at the end of that safe life whether they look good or whether they do not.

The probability of failure of those parts for the life time they are to be used for has got to be extremely remote. In quantitative terms that means one chance of failure in a billion flights in the design environment.

In the case of fail-safe design the structure has to be redundant, such as the skin of a fuselage. You have to have structure which, in the event you have a cracked skin on the fuselage, will pick up the load and prevent the crack from progressing further. So you have redundant structure for safe-life.

You have an analysis which is called the FMEA, the failure modes and effects analysis, which also have to show statistically by analysis and by testing that there is again only an extremely remote probability of failure of the redunctant structure and the primary structure.

Those two analytical methods satisfy the FAA. Having done that in today's rule, anything dependent on the reliability of that kind of structure is assumed to be safe without further review of the consequences of failure, because you have already proved by today's rule, if you have done these analyses, that that structure will not fail.

Therefore, backing up on Mr. Burton's comments this morning about the DC-10 and the failure of the DER's, he is in error. The rule today only requires that the safe-life or fail-safe characteristic of the nacell and pylon structure be shown analytically to the FAA.

Beyond that, a manufacturer does not have to worry about an engine coming off because it has already been proved by the rule that it will not come off.

The committee's recommendation for the change in the rule would require, that you do go through the analysis to insure that the structure is totally reliable and that the probability of failure is extremely remote, 1 in 1 billion. The same statistical analysis, which has not been proved wrong, by the way, should be required. However, the rule that we would recommend would require that you now examine, in spite of this analysis giving you comfort, the consequences of failure in any case. Even though you have proved it will not fail, you must examine the consequences if it did.

The anlaysis deals with what we call a design environment only, and there are extracurricular things that are outside the design environment, such as a food loading truck backing into a wing beam or some unforeseen thing happening in maintenance that somebody did not discover, and those are outside the design environment.

What if they happened? Are the reliable pieces of structure still reliable? You have to assume they are not. So what are the consequences? In the case of a DC-10 slat, for example, you would have said, "Let us put the hydraulics behind the rear spar, not at the front beam," and therefore, the engine would not wipe them out, et cetera.

Parts of this philosophy are already incorporated in aircraft. For example with the turbine engines of an airplane the determination of fail-safe and safe-life parts in the rotating machinery is required. So you have already determined by the rule that a turbine disc cannot fail theoretically or that a turbine blade cannot fail theoretically. They have a safe-life analysis that proves it.

However, the FAA and the CAB and other regulatory bodies still require that an airplane be designed such that if they do fail, the trajectory of these parts will not go through the cabin and kill passengers or will not go through hydraulic lines and electric lines in the aircraft.

The design does have to consider the consequences of that kind of a failure and that is a piece of what we are saying should be the general rule.

Ms. FERRARO. So you are saying that DC-10 incident, had they anticipated that the engine would fall off, even though that is something that should not occur——

Mr. FRISBEE. They met the rule by showing that the probability was extremely remote, but they did not realize somebody was going to use a forklift when it was not recommended in the maintenance and removal of the engine and pylon.

And therefore, this rule would probably have prevented that kind of affair. And as you know, as a result of the cargo door failure of the DC-10, a part of this rule has been adopted as a rule, that requires the venting of the widebody floors. In the event of having a cargo door come unglued or having a hole in the lower part of the fuselage, with venting the floor does not collapse onto the control systems. That is giving consideration to the consequences of failure of something which analytically cannot fail.

Ms. **Ferraro**. When you were working on the certification process, did you go into any inner-cabin safety features that might have been of some assistance or might have prevented the incident that occurred the other day?

Mr. **Frisbee**. We looked at a number of specifics of the state of the art and the incorporation of the state of the art in modern aircraft. Generally speaking the industry moves to incorporate reliable developments in the state of the art independent of the minimum safety requirement of the FAA.

Many of the things in the large late transport aircraft today are well beyond the minimum rule requirement of the FAA. We looked at a number of those things, and our recommendations address updating of the FAA rules and regulations to incorporate state of the art.

One of the recommendations in our report calls for a planned review of the state of the art by competent people and a "road map," which the FAA uses to determine how it meets its milestones and how it stays up with the industry.

We looked at cabin safety and we looked at a number of specifics, but addressed them generally in the recommendation that there should be a planned and scheduled process of review and updating of the rules and regulations to take advantage of everything that can be taken advantage of in technology.

Ms. **Ferraro**. Again, I thank you, Mr. Frisbee. I am going to turn the chair back to the chairman.

[At this point, Mr. Anderson resumed the Chair.]

Mr. **Anderson**. Mr. Fary?

Mr. **Fary**. I have no questions, Mr. Chairman.

Mr. **Anderson**. Mr. Hutchinson?

Mr. **Hutchinson**. Thank you, Mr. Chairman.

Mr. Frisbee, we appreciate sincerely your being here today. Congratulations on, I think, a good report. We appreciate your expertise and your input.

As you were here this morning, on the designated reps and that portion of the report, you all volunteered that there might be some problems with objectivity. It was stated this morning that perhaps in some instances the reps, designated reps might be supervising engineering work or design and then be approving their own responsibilities.

Is that, in fact, a situation which exists? Did you find that situation?

Mr. **Frisbee**. It exists, yes. It is a situation which exists. However, it exists to a greater degree in some places than in others.

Mr. **Hutchinson**. I can appreciate that. As an engineer, do you feel as though that may be a burden being placed on the individual that is probably unwarranted that you should not put him in a spot where if something happened that he was made to certify his own mistake?

Mr. **Frisbee**. Well, as an engineer in the aircraft industry, and I have been involved in the engineering side of the aircraft industry for 40 years, I feel that you are not asking anything of an engineer which he is not ready and willing to accept and which he is qualified to accept based on the kind of work he is doing.

The motives for both the FAA and an airplane design engineer are identical. Therefore, there is no conflict with respect to what he is trying to do. In addition, the selection process is a very, very carefully handled one. The one who has been selected as a designated engineering representative for the FAA regards it as a badge of honor, and the professional integrity of an engineer is such that he does not want to be the guy that is tabbed as having designed that boobytrap.

If there is a question about a design, he is going to be the first one to question it. I think that putting an engineer in the position of a designated representative and in effect reporting to the FAA for the design he is responsible for, or in some cases the design he is not responsible for but which his company is responsible for, is something he would expect you might do. He assumes that responsibility without any question, and I think it is the way to go.

Mr. **Hutchinson**. Well, I am not challenging the rep being a member of Lockheed or whoever and then overseeing something that is being done over here. He is sitting here and over there. I am just—it seems to me it is a heck of a burden to put on one guy by designating him and saying you are in charge of this work and you certify it.

If I were in that position, I would want somebody else looking over my shoulder and saying, "I will certify your work. I do not want you to have to hold that burden."

It seems to me that that might be a way of improving the designated rep situation, and it has nothing to do with the integrity of the guy or the gal. It is a matter of we should not have to inspect our own work and be responsible for it.

Mr. **Frisbee**. Well, I think that the designated engineering representative is not the sole figure involved in reviewing his design. The number of representatives involved is something in the neighborhood of 30 to 50, depending on whether we are talking about a Boeing or a Douglas or a Lockheed.

They have working with them and checking and double checking the work which they eventually present to the FAA a host of experts who review also the technical credibility of their work.

The engineer is not sitting there all alone, and is not the one necessarily who puts the drawings on the paper. The one who puts the drawings on the paper and does the design work may work for a supervisor who may supervise other work of a similar type going on in the organization.

And therefore, it is not as if I draw a picture and then approve it as a great work of art. This design work in any one of the areas of an airplane is complex enough that a number of experts are reviewing it before even the supervisor stamps it as technically acceptable.

So he is not bearing the entire burden. He is certifying that the technical organization he is responsible for or the technical organization that he works in has brought its full voltage to bear on this particular design and therefore the competence of the company is vested in it.

That is all he certifies, not that he personally, alone, all by himself, attests to the credibility of the design. So it is a burden from the standpoint of responsibility, but it is a burden that he accepts willingly. In fact, he regards it, as I said, as badge of honor.

Mr. **Hutchinson.** One other question. It was said this morning that basically the FAA just rubberstamps, really do not have the capacity. Do you take issue with that or do you basically agree with that? I know your recommendation is to upgrade their competency.

Mr. **Frisbee.** If you read the report, one of the things I stated awhile ago in our prepared testimony here, and I will quote, "Our recommendations present a balanced strategy that should be applied as a package."

One of the principal recommendations that we have made and probably at this time the most important, if there is a most important one, is the recommendation for a centralized highly competent technical group as opposed to the fractured, regional breakup that currently exists in the FAA, I am giving you an indirect answer, but in effect, I am saying that the technical expertise required to be able to review some of the kinds of reports I described a few moments ago—the failure modes and effects analysis and the advanced technologies and auto land systems, et cetera—require capabilities and competence beyond the level of some of the technical people now responsible for those things in the FAA.

We recommend upgrading that centralized group so that, in fact, when a flutter dymanicist presents a report to the FAA, the FAA cannot just assume that he works for Boeing, and therefore, must know what he is doing and stamp it. He, the FAA engineer, must be able, as an expert himself, to question the company expert, and determine whether or not the concept and the design approach is up with the state of the art and is compatible with other things he knows across the industry.

Today, that is really not being done. There is no necessity for anyone who really knows the technology to read every word in a report. If he can talk across the board with an expert on equal terms, he can determine whether or not the design concept and what has been done is satisfactory.

Today, they cannot quite do that, and therefore, there is more responsibility placed on the DER than, in effect, I think was intended initially. With the recommendation of the upgrading of a centralized group, putting them in a position where they see the field of design from Boeing to Douglas to Lockheed to Convair and so on, and having them, then, talk across the table with the DER expert, with this background expertise which essentially should be equivalent, then I feel that the FAA would have control and would be running the show.

Today, I think there is a question about that.

Mr. **Hutchinson.** Mr. Chairman, I have nothing further.

Mr. **Anderson**. Following on your idea of centralizing the DER's, the DOA's, and the DMIR's, we tried to find out whether there had been any checking by anyone with the DMIR, the maintenance inspector in the case of the Chicago incident. No one checked with anybody on anything.

Now, how could you take that to a central headquarters when the fault was out in there where the actual maintenance job was being done. There should have been somebody out there responsible to make sure the correct job was being done.

Mr. **Frisbee**. Mr. Chairman, I think that statements made this morning that indicate that nothing was ever taken to anyone are not quite correct.

I mentioned a few moments ago with respect to some of the testimony we heard this morning that no one ever took any of the failure effects information to the FAA, et cetera. The failure modes and effects analyses of the DC-10 cargo door was taken to the FAA. The FAA did look at it. It was done by a Convair engineer. I visited Convair and talked to them about it. They had some question. The point that I want to make here is that the design of the DC-10 and the arrangement of the cargo door did meet the current rule.

That is why we have recommended a change in the rule to require that, with failure of a principal piece of structure, an analysis of the consequences should be performed. The Douglas engineering people did take the data to the FAA, and they do review it.

Now, as far as the other DC-10 problems are concerned, you are talking about the in-shop inspection group, maintenance inspectors.

Mr. **Anderson**. The maintenance shop inspection should be checked on to make sure that they do the things they are supposed to be doing on anything, whether it is a pylon or any other part of the airplane.

Mr. **Frisbee**. That is right, and that has to do with the surveillance of the maintenance activity at the airline.

Mr. **Anderson**. All over the country.

Mr. **Frisbee**. All over the country at the airlines.

Mr. **Anderson**. I do not see how bringing that to a central place whether it be at the academy or whether you——

Mr. **Frisbee**. You bring it to a central place at the design stage. What you are talking about, Mr. Chairman, is what happens when the airplane is out in the field. The recommendations of the committee, as you will see if you read the report, call for improvement in the surveillance by the FAA in the field.

Mr. **Anderson**. How would they do that?

Mr. **Frisbee**. By a change in the procedures for the principal maintenance inspectors and the principal avionics inspectors that reside at the various airline facilities.

Mr. **Doyle**. Also, Mr. Chairman, one of the recommendations that our committee made was that the manufacturer, the holder of the type certificate be on top of any changes of the recommended maintenance procedures when the airplane gets to the airlines.

In the case of the DC-10, for example, the Douglas had said you cannot remove both the pylon and the engine at the same time. Now, that was changed. Our committee said major changes in maintenance programs of the airlines should be reviewed by the manufacturer or the holder of the type certificate in conjunction with the regional office where the type certification was given.

This is done by the district offices that have nothing to do with the certification at the present time. So we are recommending a change in this by procedures where the manufacturer has a review of this type of change.

Mr. **Anderson**. I am not even sure that if the accident had not have happened you would have even got the question brought to you, because I do not think they brought it that far. I do not think they would bring it to any centralized spot either. I think that is the problem. There was not anyone out there in authority watching what they were doing.

I think we have got to have some supervision by the FAA of the DOA's and the DMIA's and the DER's.

Mr. **Doyle**. The principal maintenance inspectors that I am referring to are FAA personnel assigned to the airline maintenance facilities.

In the case that we have talked about here with the recommendations in this report, any deviation from the approved maintenance program—which is the maintenance review procedure approved by the FAA, submitted to the FAA and approved at the outset which says this is the way this airplane should be maintained and this is the way you take the engines off; this is the way you handle it when you jack it, et cetera—any major deviation from that, under the recommendations which we are now talking about, would have to be taken to the manufacturer by the principal inspectors that reside at the airline facility.

Today, that is not necessary, and in addition to that, we are recommending what we call a hands-on inspection. Today, the principal maintenance inspectors and avionics inspectors only review paper. They do not look at the hardware. They do not go out and look—when somebody says there is a cracked bulkhead over here on such and such an airplane, they look at the paper to see what the disposition was, et cetera, and to see that the company followed the procedures which it says it follows in repairing an airplane. They do not go and look, necessarily, by rule at the hardware. We recommend that they do do that in the future.

And in any discrepancy between what the airlines practices are and what they should be should then be brought to the FAA for a review, if there is any argument.

There needs to be a closer surveillance by both the manufacturer and the FAA in what goes on in the field and there needs to be a better record kept, and this is part of the recommendation.

Mr. **Anderson**. Is the pay that the FAA offers to its engineers comparable to that offered by industry?

Mr. **Frisbee**. The pay that the FAA offers the engineers that reside in the regions is not that far from the pay of engineers in the industry. The pay that would be required to recruit the centralized group that I am talking about, and I am talking about engineering, design and technical people, would have to be increased over what the FAA offers today.

Mr. **Hutchinson**. Mr. Chairman?

Mr. **Anderson**. Yes.

Mr. Hutchinson. How large a group would you visualize that centralized group to be?

Mr. Frisbee. I would envision it to comprise a total of no more than 50 or 60 people. This group would include 15 or so exceptionally competent experts in the applicable technical fields, the majority of whom are not currently employed by the FAA. These experts would be the nucleus of the central group. The remaining engineers could be selected from personnel presently employed in the regions.

Mr. Hutchinson. Average pay being $70,000, $80,000?

Mr. Frisbee. I do not think it would have to be that high.

Mr. Hutchinson. Well, $45? Because there are limits on it.

Mr. Frisbee. I would say in today's terms, $50,000 to $60,000 should attract some very competent people, highly competent.

Mr. Hutchinson. I yield back.

Mr. Anderson. What does the FAA pay its engineers today that are doing this job?

Mr. Frisbee. I think rather than try to remember that, we have information on that, Mr. Chairman, and we will submit it to you because we did get comparisons of industry and the FAA salaries, but I just do not remember them well enough to quote them.

Mr. Anderson. Because I would have thought what you are talking about would be much higher than what you just told us.

Mr. Frisbee. No. The people that we are talking about that are in the hands-on technical areas in the companies do not make a lot more than that. Many of them make much less. Younger engineers in some of the most complicated technical disciplines are $35,000, $40,000 engineers. They are not all $70, and $80 and $100,000.

And we did find, if my memory serves me correctly, that the salaries of the intermediate group in the FAA was pretty comparable with the industry.

[The following was received for the record:]

National Research Council,
Assembly of Engineering,
Washington, D.C., August 22, 1980.

Mr. David Traynham,
Professional Staff Member, Subcommittee on Aviation, Public Works and Transportation Committee, House of Representatives, Washington, D.C.

Dear Mr. Traynham: Enclosed is a statement in response to Congressman Anderson's question to Mr. Lloyd Frisbee concerning comparative salaries in industry and government for aviation engineers, made in testimony before your subcommittee on August 21, 1980.

We would also like to offer a correction to Mr. Frisbee's statement that Convair engineers had originated the analyses required by the FAA for the DC-10 leading edge slat. What Mr. Frisbee meant to say was that Convair engineers had originated analyses required by the FAA for the DC-10 cargo door.

We would appreciate receiving a copy of the transcript in draft form so that other corrections may be made before the record is final.

Thank you for your assistance with this matter.

Yours sincerely,

Susan C. Perry,
Executive Secretary.

Enclosure.

Testimony of Lloyd E. Frisbee

The Committee on FAA Airworthiness Certification Procedures reviewed the salaries paid to aerospace engineers by both industry and the FAA, examining level of education, length of service, fringe benefits, and comparisons of job descriptions, using Department of Labor classifications. In general it was found that, while industry salaries were higher than government, differences were least at the mid-level engineering classifications, comparable to GS 7-11. Although competition with industry salaries appears to be a problem in all areas of government, the committee concluded that higher salaries alone were not the answer to improving the quality of the FAA staff. The committee also noted that government employment offered relative stability and security as well as the potential challange of dealing with a number of different technical and public policy issues. Therefore, it made recommendations concerning types of assignment, organization of work, a centralized location, and resources for travel and education, as outlined in its report.

Mr. DOYLE. I think that is correct. I think the new hires that the FAA can obtain or the Government earn is much less than industry. Remuneration is much less for them than it is for the new hire in industry.

But the Government engineer catches up to what the industry is.

Mr. HUTCHINSON. Mr. Chairman, being able to attract to Federal employment, is it because the future job opportunity is better in the private enterprise, is that the difference or is it that the recruiting practices are better?

Mr. FRISBEE. You mean in the industry today?

Mr. HUTCHINSON. Yes. I mean in the FAA being able to attract equally competent people.

Mr. FRISBEE. You mean can they today?

Mr. HUTCHINSON. Well, the competency is less at the FAA by what you have said.

Mr. FRISBEE. Yes.

Mr. HUTCHINSON. Yet the starting salaries are approximately the same. And I am wondering why we do not compete as well.

Mr. FRISBEE. I think that the image of the FAA today does not attract engineers. It does not project the image of initiative and participation in the advancement of technology. It is not exciting as it used to be.

It used to be in the earlier days that an engineer was very much interested in getting into the FAA or the CAA. That is not the case today. The FAA is not regarded as a leader in aviation technologies or the application of aviation technologies. That can be changed.

It can be changed, though, by having a body of highly competent leaders in technology who are admired by younger engineers graduating from the technical school and so forth and would be happy to come to work for them. And that is not the case today.

Mr. ANDERSON. The panel report refers to the FAA as "a second-generation regulatory agency whose staff faces fewer challenges." I have some difficulty understanding why there are fewer challenges when the industry is growing more complex and sophisticated. And can you elaborate on your conclusion?

Mr. FRISBEE. Well, I think that is a statement that's a little hard to understand. I think what we are attempting to say there is that things are becoming more and more specialized, and there is a tendency for a person nowadays, to be specialized in a certain area which isn't as challenging as being given the broad responsibilities that he had in the past. In order to compensate for that, he has to be given a higher level of responsibility for an understanding of and capability in the technology that he specializes in.

It used to be a young engineer, even in the design industries at Boeing or Lockheed or Douglas, was responsible for consideration of a number of designs all at the same time. In other words, he might be designing and inventing a new landing gear for three or four airplanes back in the preliminary design room. He might be working on a new airfoil on one airplane and a different airfoil on another. He would be working on the aerodynamics for maybe a bomber and a commercial airplane.

Today in the industry as well as in the FAA, mostly they are polishing the brass on derivatives of a 747, or a C-130 or an L-1011, and don't have as broad a challenge. It's more specialized, and therefore probably not as exciting unless he can get deeper into it.

Mr. **Anderson**. Administrator Bond testified that his agency had been aware of many of the problems cited in your report and had been working to improve the situation. Did your panel find evidence that these problem areas had been identified and that changes were taking place?

Mr. **Frisbee**. I think that the summary of our report with its 17 recommendations in effect speaks to that. It says that it could be better and should be better. There are areas we have identified having to do with the need for a higher technical competence, areas we have identified having to do with improved surveillance of maintenance, areas we have identified having to do with a better planning, and scheduling of the incorporation of advanced technologies, for improved safety and for the surveillance of the aging fleet to see whether or not there are problems with some of the older airplanes. In those things, we don't feel there has been enough movement. That's why we recommend that something be done.

Mr. **Anderson**. Mr. Fary? Mr. Hutchison? Then, thank you very much, Mr. Frisbee, and your colleagues there.

Mr. **Frisbee**. Thank you.

Mr. **Anderson**. And at this time I guess we are going to have to recess. We will be back in about 20 minutes for our next witness.

[Recess.]

Mr. **Fary** [presiding]. Mr. Baltas Birkle, Deputy Director of Community Economic Development Division, General Accounting Office.

Mr. Birkle, the full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF BALTAS E. BIRKLE, DEPUTY DIRECTOR, COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE

WE WELCOME THE OPPORTUNITY TO DISCUSS OUR FEBRUARY 1980, REPORT ENTITLED "HOW TO IMPROVE THE FEDERAL AVIATION ADMINISTRATION'S ABILITY TO DEAL WITH SAFETY HAZARDS" (CED-80-66) WHICH RESULTED FROM THE REQUEST OF THE CHAIRMAN OF THE HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION AND THE REQUEST OF CONGRESSMAN ELLIOTT H. LEVITAS OF THIS SUBCOMMITTEE. WE REVIEWED FAA'S MANAGEMENT EFFORTS TO IDENTIFY, SET PRIORITIES FOR, AND DEVELOP TIMELY SOLUTIONS TO SAFETY HAZARDS. SAFETY HAZARDS INCLUDE PROBLEM AREAS SUCH AS MIDAIR COLLISIONS, CABIN FIRES, AND SEAT DISLOCATIONS DURING CRASH IMPACTS. WE

DID NOT ASSESS THE TECHNICAL SUFFICIENCY OR REASONABLENESS OF FAA'S APPROACHES AND ITS SOLUTIONS.

REVIEW RESULTS

TO PLACE OUR FINDINGS IN PROPER PERSPECTIVE, I DO WANT TO STRESS THAT WHEN COMPARED WITH OTHER TRANSPORTATION MODES, AVIATION HAS AN ADMIRABLE SAFETY RECORD. YET, FAA CAN ENHANCE AVIATION SAFETY BY FURTHER IMPROVING ITS PERFORMANCE.

THE FAA HAS NOT ALWAYS BEEN EFFECTIVE OR TIMELY IN DEALING WITH SAFETY HAZARDS AND ITS ACTIONS ARE OFTEN PERCEIVED TO BE REACTIVE INSTEAD OF ANTICIPATORY.

LET ME BRIEFLY DESCRIBE THE SEQUENCE IN WHICH SAFETY HAZARDS ARE ADDRESSED. AS A FIRST STEP, THERE MUST BE A SYSTEM FOR IDENTIFYING SAFETY HAZARDS. A COMPREHENSIVE PLANNING PROCESS MUST THEN BE DEVELOPED TO ADDRESS THE SAFETY ISSUES. NEXT, INDIVIDUAL SAFETY PROGRAMS SHOULD BE PLANNED AND APPROVED. CONTROLS MUST BE SYSTEMATICALLY ESTABLISHED TO ENSURE THAT PROGRAMS ARE SUCCESSFULLY IMPLEMENTED AND, ONCE IN PLACE, ARE SUFFICIENTLY EVALUATED AS TO THEIR EFFECTIVENESS.

SAFETY HAZARD IDENTIFICATION

FAA HAS NOT BEEN EFFECTIVE OR TIMELY IN DEVELOPING SYSTEMS TO IDENTIFY SAFETY HAZARDS. IT HAS NOT

--RECOGNIZED THE IMPORTANCE OF HAZARD IDENTIFICATION SYSTEMS,

--EMPHASIZED INFORMATION GATHERING AND ANALYSIS, OR

--UNDERTAKEN LONG-TERM PLANNING FOR COMPREHENSIVE IDENTIFICATION SYSTEMS.

ORGANIZATIONAL PROBLEMS HAVE HAMPERED FAA'S EFFECTIVENESS. FOR EXAMPLE, NO SINGLE INDIVIDUAL OR OFFICE HAS BEEN RESPONSIBLE FOR HAZARD IDENTIFICATION, AND ORGANIZATIONAL CONFLICTS HAVE EXISTED BETWEEN FAA AND THE NATIONAL TRANSPORTATION SAFETY BOARD. TO BETTER UNDERSTAND HOW TO IDENTIFY HAZARDS CAUSED BY HUMAN BEHAVIOR, FAA CONDUCTS HUMAN FACTORS RESEARCH. HOWEVER, PEOPLE INSIDE AND OUTSIDE FAA QUESTION WHETHER THE AGENCY PAYS ENOUGH ATTENTION TO THIS KIND OF RESEARCH. REGARDLESS OF WHETHER SUCH PERCEPTIONS ARE ACCURATE, IT IS CLEAR THAT AN AGENCYWIDE APPROACH TO HAZARD IDENTIFICATION IS WARRANTED.

COMPREHENSIVE PLANNING PROCESS

FAA DOES NOT HAVE A COMPREHENSIVE PLANNING PROCESS FOR ADDRESSING AVIATION SAFETY ISSUES. SUCH A PROCESS IS NEEDED TO GIVE MANAGEMENT A FRAME OF REFERENCE FOR PLANNING, APPROVING, IMPLEMENTING, AND EVALUATING SPECIFIC SAFETY PROJECTS. TOP MANAGEMENT'S LACK OF ATTENTION TO PLANNING HAS CONTRIBUTED TO UNTIMELY OR INEFFECTIVE APPROACHES FOR ADDRESSING SOME SAFETY HAZARDS.

INDIVIDUAL SAFETY PROGRAM PLANS

FAA DOES NOT HAVE AN ADEQUATE SYSTEM FOR PREPARING, REVIEWING, AND APPROVING INDIVIDUAL AGENCYWIDE SAFETY

PROJECT PLANS. OUR REVIEW DISCLOSED THAT WITHOUT SUCH PLANS,

--PRIORITIES WERE NOT ASSIGNED AGENCYWIDE AND WERE NOT CONSISTENTLY APPLIED.

--REQUIREMENTS WERE NOT SPECIFICALLY DEFINED.

--COSTS AND BENEFITS WERE NOT CONSIDERED AT THE EARLIEST STAGES.

--INTERIM CORRECTIVE ACTIONS WERE NOT AGGRESSIVELY EXPLORED.

--COORDINATION WAS NOT ASSURED.

--STAFFING IMPLICATIONS WERE NOT PROPERLY ADDRESSED.

--ACCOUNTABILITY WAS NOT ADEQUATELY ESTABLISHED.

FOR EXAMPLE, FAA BEGAN A HIGH PRIORITY PROJECT IN OCTOBER 1973 TO DEVELOP A CHILD RESTRAINT DEVICE FOR AIRCRAFT USE. THE PROJECT WAS INITIATED BECAUSE INFANTS HAD BEEN INJURED DURING TURBULENCE, HARD LANDINGS, AND STOPPAGE OF AIRCRAFT. PRIORITY ON THIS PROJECT WAS LATER DOWNGRADED, AND IN MAY 1978 THE PROJECT WAS CANCELED. NOT UNTIL AFTER A DECEMBER 1978 AIR CARRIER ACCIDENT IN PORTLAND, OREGON, IN WHICH TWO INFANTS DIED, DID FAA ESTABLISH ANOTHER HIGH PRIORITY PROJECT TO DEVELOP A CHILD RESTRAINT DEVICE.

ANOTHER EXAMPLE WAS THE LACK OF INTERNAL COORDINATION AND THE DISAGREEMENTS OVER POLICY, APPROACH, AND DIRECTION TO DEAL WITH MIDAIR COLLISIONS. ONLY AFTER THE SEPTEMBER 1978

SAN DIEGO MIDAIR COLLISION DID FAA DEVELOP A COORDINATED AGENCYWIDE PLAN TO ADDRESS THIS HAZARD. THE FAA ADMINISTRATOR ACKNOWLEDGED IN DECEMBER 1978 THAT THE ACCIDENT CAUSED FAA TO FOCUS SYSTEMWIDE ON THE GENERAL THREAT OF MIDAIR COLLISIONS.

MANAGEMENT CONTROLS DURING IMPLEMENTATION

FAA DOES NOT HAVE AN ADEQUATE SYSTEM OF CONTROLS TO GOVERN THE IMPLEMENTATION PHASE OF SAFETY PROJECTS. THESE CONTROLS WOULD ASSIST FAA IN CONDUCTING ITS SAFETY WORK IN A MORE TIMELY AND EFFECTIVE MANNER AND HELP ASSURE THAT COMMITMENTS ON INDIVIDUAL SAFETY EFFORTS ARE MET.

IMPORTANT INFORMATION ABOUT FAA'S SAFETY PROJECTS HAS NOT BEEN ADEQUATELY OR CONSISTENTLY DOCUMENTED. ITEMS WHICH WERE EITHER NOT MAINTAINED IN AGENCY PROJECT FILES OR WERE MAINTAINED IN VARYING DEGRESS OF QUALITY INCLUDE

--PROJECT PLANNING DOCUMENTS (ORIGINALS AND ANNUAL UPDATED REVISIONS);

--MODIFICATIONS TO OR DEVIATIONS FROM THE PLAN RELATIVE TO PRIORITY, REQUIREMENTS, COST-BENEFIT ANALYSES, INTERIM CORRECTIVE ACTIONS, ACCOUNTABILITY, ETC.;

--PROGRESS REPORTS AND PROGRAM REVIEW RESULTS;

--EVIDENCE OF INTERNAL COORDINATION;

--SUMMATION OF STAFF TIME CHARGED TO THE PROJECT; AND

--DESCRIPTION OF ANY FACTORS AFFECTING THE TIMELINESS AND EFFECTIVENESS OF THE WORK.

BY DOCUMENTING RESULTS OF DECISIONMAKING, MANAGEMENT CAN ASSURE ITSELF THAT EVENTS AND THE CIRCUMSTANCES SURROUNDING THEM ARE ACCURATELY RECORDED AND UNDERSTOOD BY ALL AFFECTED PARTIES. DOCUMENTATION FACILITATES COORDINATION AND COMMUNICATION BECAUSE IT IS IN WRITTEN FORM. WITHOUT IT, THE RECONSTRUCTION OF PAST EVENTS OR AGREEMENTS RELIES COMPLETELY ON THE MEMORY OF KEY PARTICIPANTS THAT MAY OR MAY NOT BE AVAILABLE. LACK OF DOCUMENTATION, ESPECIALLY IN AN ENVIRONMENT WITH A RELATIVELY HIGH RATE OF STAFF TURNOVER, MAKES IT VERY DIFFICULT FOR NEW STAFF TO BE FULLY PRODUCTIVE.

ONCE A COMMITMENT TO SOLVE OR REDUCE A SAFETY HAZARD HAS BEEN MADE AND A PLAN HAS BEEN PREPARED, THE MONITORING OF ACTUAL PERFORMANCE WILL INDICATE THE PROGRESS BEING MADE. WITHOUT SUFFICIENT MONITORING, MANAGEMENT LACKS KNOWLEDGE ON WHICH TO EVALUATE PERFORMANCE.

EVALUATIONS

PROGRAM EVALUATION IS AN INTEGRAL PART OF EFFECTIVE MANAGEMENT. IT PROVIDES THE FEEDBACK WHICH AN AGENCY NEEDS TO MEASURE PERFORMANCE AGAINST OBJECTIVES AND, WHEN NECESSARY, TO REDEFINE THOSE OBJECTIVES. AN EFFECTIVE SYSTEM FOR OBJECTIVELY EVALUATING THE EFFECTS OF ITS PROGRAMS WOULD BE ESPECIALLY VALUABLE FOR AN AGENCY LIKE FAA WHICH IS RESPONSIBLE FOR REGULATING A DYNAMIC FIELD SUCH AS AVIATION.

IN RECENT YEARS, HOWEVER, EVALUATION HAS RECEIVED LITTLE PRIORITY AND HAS DIMINISHED IN USE AT FAA. THOUGH ASSIGNED

MAJOR EVALUATIVE FUNCTIONS, THE OFFICE OF AVIATION SAFETY AND THE PROGRAM REVIEW STAFF, OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR ADMINISTRATION, HAVE EITHER NOT CARRIED THEM OUT OR DID NOT PROVIDE FOR APPROPRIATE INDEPENDENCE IN PERFORMING SUCH FUNCTIONS. FURTHER, FAA HAS NOT ALWAYS EVALUATED THE EFFECTIVENESS OF NONREGULATORY ACTIONS THAT ADDRESSED SAFETY PROBLEMS AND DID NOT REQUIRE THAT SUCH EVALUATIONS BE MADE.

RECOMMENDATIONS

WE MADE NUMEROUS RECOMMENDATIONS TO THE SECRETARY OF TRANSPORTATION WHICH, IF IMPLEMENTED, SHOULD IMPROVE FAA'S PROCEDURES, PROCESSES AND CONTROLS AND WOULD ENABLE FAA TO RESPOND MORE QUICKLY AND EFFECTIVELY TO AVIATION SAFETY PROBLEM AREAS. ONE OF OUR RECOMMENDATIONS CALLED ON FAA TO ESTABLISH A TOP MANAGEMENT GROUP, WHICH MIGHT BE CALLED THE ADMINISTRATOR'S SAFETY ADVISORY GROUP, TO IDENTIFY OVERALL SAFETY PRIORITIES AND TO REVIEW AND APPROVE SPECIFIC AND DETAILED SAFETY PROJECT PLANS.

AGENCY REACTION AND OUR ASSESSMENT

THOUGH CONCURRING WITH MANY OF OUR FINDINGS AND OBSERVATIONS, THE AGENCY IN COMMENTING ON OUR DRAFT REPORT DID NOT CLEARLY ADDRESS, OR DID NOT ADDRESS AT ALL, MOST OF OUR SPECIFIC CONCLUSIONS AND RECOMMENDATIONS. THE DEPARTMENT OF TRANSPORTATION BELIEVED THAT RECENT ACTIONS TAKEN AND TO BE TAKEN WITHIN FAA WOULD ACCOMPLISH THE SAME RESULTS AS OUR RECOMMENDATIONS. THESE ACTIONS INCLUDE CHANGES TO THE

ORGANIZATIONAL STRUCTURE UNDER AN ASSOCIATE ADMINISTRATOR FOR AVIATION STANDARDS, INCLUDING THE ESTABLISHMENT OF A SAFETY ORIENTED ORGANIZATIONAL COMPONENT, AND CHANGES TO THE REGULATORY PROCESS.

WHILE THESE ACTIONS HAVE THE POTENTIAL FOR IMPROVING FAA'S OPERATIONS, THEY DO NOT INCLUDE THE SPECIFIC IMPROVEMENTS WE RECOMMENDED IN FAA'S PROCEDURES, PROCESSES, AND CONTROLS. WE ARE MORE ENCOURAGED, HOWEVER, BY THE DEPARTMENT'S MAY 2, 1980, RESPONSE TO OUR FINAL REPORT EVEN THOUGH IT DID NOT ADDRESS OUR SPECIFIC RECOMMENDATIONS. THE DEPARTMENT STATED THAT IT WAS TAKING ADDITIONAL ACTION WITH RESPECT TO THE FIVE AREAS CITED IN OUR REPORT REGARDING FAA-WIDE PLANNING, PRIORITIES, AND DECISIONMAKING IN ALL MAJOR MISSION AREAS. IT ALSO STATED THAT THE FAA ADMINISTRATOR HAD DIRECTED THAT A COMPREHENSIVE SET OF IMPROVEMENTS TO THE OVERALL PROCESS BE DEVELOPED. IN THIS REGARD, THE DEPARTMENT STATED THAT CAREFUL CONSIDERATION WOULD BE GIVEN TO THE GAO OBSERVATIONS. WE WILL PERIODICALLY CONDUCT FOLLOWUP WORK TO DETERMINE AND ASSESS ACTIONS TAKEN BY FAA IN RESPONSE TO OUR REPORT RECOMMENDATIONS.

MISTER CHAIRMAN, THIS CONCLUDES MY STATEMENT. WE WILL BE GLAD TO RESPOND TO YOUR QUESTIONS.

Mr. **Fary**. Please proceed.

TESTIMONY OF BALTAS E. BIRKLE, DEPUTY DIRECTOR, COMMUNITY ECONOMIC DEVELOPMENT DIVISION, GENERAL ACCOUNTING OFFICE ACCOMPANIED BY JOHN HUNT AND EDWARD MORAHAN, SUPERVISORY MANAGEMENT ANALYSTS

Mr. **Birkle**. Mr. Chairman and members of the subcommittee, we welcome the opportunity to discuss our February 1980 report entitled, "How To Improve The Federal Aviation Administration's Ability To Deal With Safety Hazards" which resulted from the request of the Chairman of the House Committee on Public Works and Transportation and the request of Congressman Levitas of this subcommittee.

Here at the table with me are Ed Morahan, our team leader on this assignment, and John Hunt, a management analyst who worked on the assignment.

We reviewed FAA's management efforts to identify, set priorities for, and develop timely solutions to safety hazards. Safety hazards include problem areas such as midair collisions, cabin fires, and seat dislocations during crash impacts. We did not assess the technical sufficiency or reasonableness of FAA's approaches and its solutions.

To place our findings in proper perspective, I do want to stress that when compared with other transportation modes, aviation has an admirable safety record. Yet, FAA can enhance aviation safety by further improving its performance.

The FAA has not always been effective or timely in dealing with safety hazards and its actions are often perceived to be reactive instead of anticipatory.

Let me briefly describe the sequence in which safety hazards are addressed. As a first step, there must be a system for identifying safety hazards. A comprehensive planning process must then be developed to address the safety issues. Next, individual safety programs should be planned and approved. Controls must be systematically established to insure that programs are successfully implemented and, once in place, are sufficiently evaluated as to their effectiveness.

FAA has not been effective or timely in developing systems to identify safety hazards. It has not recognized the importance of hazard identification systems, emphasized information gathering and analysis, or undertaken long-term planning for comprehensive identification systems.

Organizational problems have hampered FAA's effectiveness. For example, no single individual or office has been responsible for hazard identification, and organizational conflicts have existed between FAA and the National Transportation Safety Board. To better understand how to identify hazards caused by human behavior, FAA conducts human factors research. However, people inside and outside FAA question whether the agency pays enough attention to this kind of research. Regardless of whether such perceptions are accurate, it is clear that an agencywide approach to hazard identification is warranted.

FAA does not have a comprehensive planning process for addressing aviation safety issues. Such a process is needed to give management a frame of reference for planning, approving, implementing, and evaluating specific safety projects. Top management's lack of attention to planning has contributed to untimely or ineffective approaches for addressing some safety hazards.

FAA does not have an adequate system for preparing, reviewing, and approving individual agencywide safety project plans. Our review disclosed that without such plans, priorities were not assigned agencywide and were not consistently applied. Requirements were not specifically defined. Costs and benefits were not considered at the earliest stages. Interim corrective actions were not aggressively explored. Coordination was not assured. Staffing implications were not properly assessed; and accountability was not adequately established.

For example, FAA began a high priority project in October 1973 to develop a child restraint device for aircraft use. The project was initiated because infants had been injured during turbulence, hard landings, and stoppage of aircraft. Priority on this project was later downgraded, and in May 1978 the project was canceled. Not until after a December 1978 air carrier accident in Portland, Oreg., in which two infants died, did FAA establish another high priority project to develop a child restraint device.

Another example was the lack of internal coordination and the disagreements over policy, approach, and direction to deal with midair collisions. Only after the September 1978 San Diego midair collision did FAA develop a coordinated agencywide plan to address this hazard. The FAA Administrator acknowledged that the accident caused FAA to focus systemwide on the general threat of midair collisions.

FAA does not have an adequate system of controls to govern the implementation phase of safety projects. These controls would assist FAA in conducting its safety work in a more timely and effective manner and help assure that commitments on individual safety efforts are met.

Important information about FAA's safety projects has not been adequately or consistently documented. Items which were either not maintained in agency project files or were maintained in varying degrees of quality include: project planning documents—originals and annual updated revisions; modifications to or deviations from the plan relative to priority, requirements, cost-benefit analysis, interim corrective actions, accountability, et cetera; progress reports and program review results; evidence of internal coordination; summation of staff time charged to the project; and description of any factors affecting the timeliness and effectiveness of the work.

By documenting the results of decisionmaking, management can assure itself that events and the circumstances surrounding them are accurately recorded and understood by all affected parties. Documentation facilitates coordination and communication because it is in written form. Without it the reconstruction of past events or agreements relies completely on the memory of key participants that may or may not be available. Lack of documentation, especially in an environment with a relatively high rate of staff turnover, makes it very difficult for new staff to be fully productive.

Once a commitment to solve or reduce a safety hazard has been made and a plan has been prepared, the monitoring of actual performance will indicate the progress being made. Without sufficient monitoring management lacks knowledge on which to evaluate performance.

Program evaluation is an integral part of effective management. It provides the feedback which an agency needs to measure performance against objectives and, when necessary, to redefine those objectives. An effective system for objectively evaluating the effects of its programs would be especially valuable for an agency like FAA which is responsible for regulating a dynamic field such as aviation.

In recent years, however, evaluation has received little priority and has diminished in use at FAA. Though assigned major evaluative functions, the Office of Aviation Safety and the Program Review Staff, Office of the Associate Administrator for Administration, has either not carried them out or did not provide for appropriate independence in performing such functions. Further, FAA has not always evaluated the effectiveness of nonregulatory actions that address safety problems, and did not require that such evaluations be made.

We made numerous recommendations to the Secretary of Transportation which, if implemented, should improve FAA's procedures, processes and controls and would enable FAA to respond more quickly and effectively to aviation safety problem areas. One of our recommendations called on FAA to establish a top management group, which might be called the Administrator's Safety Advisory Group, to identify overall safety priorities and to review and approve specific and detailed safety project plans.

Though concurring with many of our findings and observations, the agency in commenting on our draft report did not clearly address, or did not address at all, most of our specific conclusions and recommendations. The Department of Transportation believed that recent actions taken and to be taken within FAA would accomplish the same results as our recommendations. These actions included changes to the organizational structure under an Associate Administrator for Aviation Standards, including the establishment of a safety-oriented organizational component, and changes to the regulatory process.

While these actions have the potential for improving FAA's operations, they do not include the specific improvements we recommended in FAA's procedures, processes, and controls. We are more encouraged, however, by the Department's May 2, 1980, response to our final report, even though it did not address our specific recommendations. The Department stated that it was taking additional action with respect to the five areas cited in our report regarding FAA-wide planning, priorities, and decisionmaking in all major mission areas. It also stated that the FAA Administrator had directed that a comprehensive set of improvements to the overall process be developed. In this regard, the Department stated that careful consideration would be given to the GAO observations. We will periodically conduct followup work to determine and assess actions taken by FAA in response to our report recommendations.

Mr. Chairman, this completes my prepared statement. We will be glad to try to answer any questions that you might have.

Mr. **Fary**. Mr. Birkle, Mr. Bond testified yesterday that FAA in fact engages in planning and establishing priorities through informal meetings of the agency's leadership. He believes that GAO's problem is that FAA does not keep a paper trail of these meetings. It is possible that FAA does plan effectively, but that your auditors were not aware of it because the process is informal.

Mr. **Birkle**. Well, in doing our review we constantly ran up against a problem of trying to find out exactly who was responsible for and who had done this planning and what evidence they could show us to support the planning. We were constantly in a roadblock in these areas, and we asked over and over again how the agency could really manage itself when these things were not documented and when one manager was unaware of what another manager was doing in different safety areas. So it wasn't so much documentation for the sake of documentation, it's documentation that we feel is necessary in order to have a good management process, in order for the agency to know their priorities, plan for a solution on safety problems, see that these plans are carried out and implemented, and then to evaluate them after they are implemented.

Mr. **Fary**. When your auditors visited FAA, had the system of monthly management reports been instituted? Have you reviewed these reports, and do they meet the deficiencies in planning from priorities cited in your report?

Mr. **Morahan**. I think the monthly report that Administrator Bond is talking about relates primarily to items that are already in the rulemaking process. We would be the first to admit that, when the decision is made within FAA that "we're going the rule route". Information is more centered and the subject has focused attention at the Administrator's level. For such items, they do have such a monthly report and they do track progress. However, most of the safety items that FAA is dealing with and wrestling with, are not in the rulemaking process. They're in R. & D. They are out under contract for someone to come up with a solution. They are trying to decide what kind of a priority to give it at lower levels in the organization. This period of time, sometimes that lasts 5, 7, 10 years, and there is no such monthly list of those kinds of projects. We are talking about control from the time an item is identified as a hazard, up until the final solution. They look upon it as a high priority item or an item warranting monthly reporting, only when it is decided that we now have a fix in hand, and we're going to go out with a rule.

Mr. **Fary**. Thank you, Mr. Morahan. Mr. Birkle, in your testimony you state that you have not assessed the technical sufficiency or reasonableness of FAA's approaches and its solutions. Isn't this the main issue?

Mr. **Birkle**. No. In our review, the main issue was the management process. We were not assessing the technical, engineering decisions or solutions that they came up with, but the process that they followed in handling these safety problems. In other words, was it a good management process that would lend itself to a timely and effective solution of the problem, or was it cumbersome and uncoordinated and would not lead to a timely and effective solution. So we stayed away from the technical, engineering areas because that is not our area of expertise.

Mr. **Fary**. You comment that an FAA project to develop a child restraint device was given high priority, then downgraded, then given high priority again. Is there necessarily anything wrong with this? Isn't it sometimes desirable to change priorities?

Mr. **Birkle**. Well, I'm sure in any organization there are various tasks that are undertaken that have varying degrees of priority, and some new project or new problem could come along that would have a higher priority and cause the original one to be downgraded, but I think, the management process as we reviewed it didn't really identify any good reasons or specific reasons as to why this was happening. Things would have a high priority at one period of time, and then all of a sudden would be downgraded and the lack of documentation would not enable FAA management or anyone looking at the process to really, fully understand why this was happening. And it also would not leave a trail for future managers to follow or pick up on at later time if the agency suddenly decided to raise the priority and put emphasis on it again.

Mr. **Morahan**. A key thing of importance here is, when the FAA shifts something to a low priority, in effect that means it is not being worked on at all. Now either child restraint is a problem or it isn't a problem. If it had a priority and it was being given attention at one point in time, why did that definition of what was a problem change? There is no answer to that. You can't get an answer to that question?

Mr. **Fary**. Has GAO evaluated the management systems of other agencies with safety responsibilities? If so, how does FAA compare with these agencies?

Mr. **Birkle**. We have done over the years a number of evaluations of safety-related agencies. We have audit staffs that do work at the Federal Trade Commission, Environmental Protection Agency, and other agencies that have safety missions, and we have not to my knowledge run into this same kind of a problem in these other reviews.

It's difficult for me to really speak to that, because I haven't really been involved in all of them, but I don't recall any similar situations at other agencies.

Mr. **Fary**. All right. Mr. Chairman, do you have any questions you wish to ask?

Mr. **Anderson**. Thank you, Mr. Chairman. Mr. Birkle, the purpose of our hearing is to look at these bills that have been introduced relative to reorganization of the FAA, and also to examine their effect or safety and I see you studiously avoided referring to any one of the three bills, the Goldwater bill for an independent agency, and the Levitas bill—to split off, I assume, the nonsafety aspects of the responsibility, and Matsui's which has two separate agencies. We draw from that, then, your feeling is that these bills would not contribute to more safety-effectiveness of the FAA?

Mr. **Birkle**. Well, I wouldn't want to say that, but when we started our review, the scope of our review, was to evaluate what was going on at FAA within the existing organizational framework and the laws that are on the books. So we did not really during the course of our work devote any effort to whether the safety function should be split off separately. We were trying to improve the operation of FAA as it exists today, and we identified a number of areas where we think there can be improvements and made recommendations, and we really didn't address this notion of having the safety aspect separate from the——

Mr. ANDERSON. Or an independent agency. One approach is an independent agency totally separate from any administration. The other was one of—zeroing in on just safety. The other was splitting those off into two separate agencies. Now these are their answers to our safety problem. Now you don't seem to feel this is an answer, or you just didn't go into that aspect of it?

Mr. BIRKLE. We just didn't go into that aspect. We did point out in our report, though, and I think it was pointed out earlier today, that the people working on the safety problems frequently are diverted from the safety problem of work, which does interfere with their completion of the safety projects. And of course that can be corrected by a number of ways probably within the existing agency, but that is the kind of problem I think that these bills are aiming at, too.

Mr. MORAHAN. The issue of some of these safety projects not being worked on full time, as presumably originally interviewed by the agency, because people would get diverted away, would get transferred into field regions, would retire, would leave their positions obviously impacted upon their ability to complete these projects. Also the agency because of various factors would be slow in filling positions, or not fill them at all.

Now, theoretically, assuming that the laws would never change, that doesn't mean that we give up and walk away in terms of our role. We have got to look at reasonable ways that we can recommend that can achieve improved timliness and effectiveness without necessarily a legislative change. That's what we looked at. The solution could be something simple, such as doing a staffing analysis. What is our safety workload? If it comes out to 200 staff-years per year, then maybe we need 280 people performing the work, because we divert them away to the tune of 80 staff-years.

Mr. ANDERSON. I have visited a lot of the FAA offices and places, and I find they are concerned with hazard and hazard identification. Now you say, for example, no single individual or office has been responsible for hazard identification. When I go to the FAA people in my area, we discuss navaids, for example. They would like a whole lot of them, but they can only get so many. Or maybe there's problems of runways or shears or whatever the problem happened to be in area, or TCA's in the San Diego area, or slowdown in others. They are constantly talking about things that I would consider hazards and hazard identification.

Now when you say you want a single office to be responsible for that, my feeling has been their entire operation has been doing that. They have been picking out those that have been showing the most, or that they have the money for. Now how would you—if you have got an organization that right now is working on the navaid problem and runway problems and everything else—we heard the testimony today on National Airport of the hazards there, of the fact that the runways weren't built in the right direction. These are all potential problems, and the FAA deals with that constantly. Now how would you single out of that organization a single individual or a single office that would be responsible for hazard identification when their whole job is identifying hazard identification throughout the country, and picking out those that they think are practicable or they can finance or sell?

Mr. BIRKLE. Well, I think that there's a couple of responses. No. 1, even though many different offices are working on hazard identification and working on solving the problems, there needs to be some central coordination and awareness among the various offices of what each other is doing; and that is the second point, the coordination.

Mr. ANDERSON. Yes, but isn't that the Administrator's job to centralize that?

Mr. BIRKLE. It was something that wasn't happening, though. That was one of the big problems that we identified.

Mr. ANDERSON. Every time I called to his attention a problem in my area, that something that they have shut down because of their budget problem, a tower or whatever it is, he seems to be aware of it and if he isn't, he has somebody right there who is aware of it.

Mr. MORAHAN. What we're talking about, though, goes beyond that. It transcends that. Sure, once they know the problem, they work on it. We would agree to that, and to varying priorities in varying areas.

But, how do they identify problems? Passively or actively? This is what we're talking about. Do they have an office or an organizational component themselves, that reaches out and finds the hazards or the problems before they become public knowledge?

The National Transportation Safety Board often has identified the problem before FAA has identified the problem, and has made recommendations, and over the years many of them have not even been implemented or acted upon fully by FAA. I think if you look at Administrator Bond's testimony yesterday, he indicated in it that in this particular area of hazard identification there is room for improvement, and that they have instituted certain processes. He indicated, I believe, he identified them before we arrived, or before we did or something, but in terms of hazard identification he knows there's room for improvement, and they have under way now an internal contract with the Transportation Systems Center, which is in the Department of Transportation, under the Secretary of Transportation, to look into and devise a game plan for improving hazard identification.

We have looked at that; we have studied it. It looks like it's an effort that's going to stretch out for at least a 3- to 7-year horizon, but it's a system that will bring things to their attention before they become real problems.

Mr. ANDERSON. All right, let's assume now that they were doing what you want them to do. They would have a single individual, I suppose he would not be the Administrator, it would be somebody else who would be responsible for hazard identification. What would he do? Just——

Mr. MORAHAN. No, it's not an individual, it's a system.

Mr. ANDERSON. Well, you said—you say, for example, "No single individual or office has been responsible for hazard identification."

Now I assume that's one answer. If you want to have an office or if you want to have an organization, tell us what they would be doing?

Mr. Morahan. Well, the key thing is, and they are working on it themselves, they need a computerized base for what problems have already occurred. For instance, when they had the DC-10 accident, and this was not the focus of our review at all, they went back and it took them 5 or 6 days to determine how many incidences of pylon problems they had, how many cracks had been found in the past by inspectors and identified, et cetera, et cetera.

Now that was contained in a computerized base down in Oklahoma City, but it is a very fallible system. The data in it is incomplete, and what is in the system is often inaccurate. I don't think you are going to find FAA disagreeing with that too much.

Mr. Anderson. Do you feel if we had had a single individual or an office that was responsible for hazard identification, they would have found the mishap on the pylon maintenance problem?

Mr. Morahan. This goes beyond setting up an office. You set up an office with a mission and a charter and assign it certain responsibilities. If one of the responsibilities is the fact that we are behind the curve, we are not identifying problems or hazards quick enough or often enough, and able to discuss in concrete terms how critical of a problem it is, and if that is in fact a shortcoming——

Mr. Anderson. Would this office or department be independent of the Administrator?

Mr. Morahan. No, this office should report to the Administrator.

Mr. Anderson. To him, so they would have to do what he would want, then.

Mr. Morahan. Of course.

Mr. Anderson. Well, wouldn't it be better to have an independent devil's advocate, or whatever you are trying to set up, that would be pointing out things that perhaps they know about or feel it's just one of the, maybe 8th or 9th or 10th or whatever, in the priority? If they're working for the Administrator, how would they be an eager devil's advocate then?

Mr. Morahan. Well, they don't want to be a devil's advocate. They would be helping the Administrator. They would be helping him to be certain——

Mr. Anderson. But we assume he is already doing that. My assumption——

Mr. Morahan. Well, what I'm suggesting is that we're not convinced that it's being done adequately.

Mr. Anderson. My assumption is, the role of the Administrator already is doing what you're suggesting. Now you're saying he's not doing it properly, and it would be better if he had somebody working for him, calling to his attention his shortcomings? Now how is he going to be able to do that, unless there is some independence there?

Mr. Morahan. Well, there was no such organizational component or individual in that agency today, at least at the time we did our review. You can say the Administrator has the responsibility, but how is he doing that? I mean, it's beyond us how he has been doing that. There was no——

Mr. **Anderson**. And you also recommend a comprehensive planning process for addressing aviation safety issues. How do you set up a planning process for aviation safety issues?

Mr. **Birkle**. Well, this is a planning process for addressing the problems that may arise, and the problems that have arisen, and establishing some order in how they would go about solving them. It would be a planning process that would include all the different issues that the agency has to face.

Mr. **Morahan**. In other words, what is the problem? What resources do we have that can assist in solving the problem? If we don't have them all within our control or all the resources necessary, who can we turn to for assistance, such as the Mitre Corp. or something? What timeframes are we going to put on this item? When do we want periodic feedback? How is management going to be able to assess progress? And these kinds of issues. How many people do we need? How long are we going to keep them? Are we going to allow them to work on other things besides this primary project such as congressional request letters, answering letters to interest groups, working on task force review or something like that?

These decisions have to be made up front, because when they are not made up front you have no way of assigning accountability for a lack of action or tardiness in completing things.

Mr. **Anderson**. Who would be responsible for this planning process? Is this the Administrator again?

Mr. **Morahan**. It would have to be up at the Administrator's level.

Mr. **Anderson**. What would he do now then that he is not doing now, in setting up this planning process?

Mr. **Morahan**. Well, when someone decides to kick off, let's say, an R. & D. effort or whatever they feel is part of the solution process after a hazard has been identified, what they would have to do——

Mr. **Anderson**. But what if they've got lots of hazards?

Mr. **Morahan**. For every hazard they are going to have to assign what they think the priority should be, that's the individual at the action desk. He's going to have to write up a plan: Here's the problem, here's my proposed solution, here's what agency resources I think we should dedicate towards a solution process. And that should be reviewed at some management level. I am suggesting that is not systematically happening today.

Mr. **Anderson**. Just one last question. You're suggesting a top management group that might be called the Administrator's safety advisory group. Your recommendation sounds like this is a pretty general administrative group. Would this be similar to or different from the one we heard recommended a moment ago, of a top engineering group to be called in here perhaps to Washington or some centralized place where there would be the actual top engineers to review designs and things like that, which to me is a terribly full-time job if you are going to really go into the design of all the airplanes and a dozen or so people? That would be a different kind of a group than this Administrator's safety advisory group that you're recommending, isn't it?

Mr. **Morahan**. Well, first of all, we never heard of the recommendation for the other group until long after our report was issued. In other words, our recommendation was arrived at by ourselves. Presumably, and just thinking about it now, it would have to be a separate group because the kinds of things that we're talking about that the safety advisory group that we're suggesting would do, involve things that take on projects such as, let's say, midair collisions, some project that requires an across-the-board look by the agency.

In conducting these projects, you're talking about research and development people; you're talking about management's attention; you're talking about the aviation standards in headquarters, NAFEC in Atlantic City; efforts that cross organizational lines, that involve multiorganizational lines that involve multiorganizational components. These type efforts are the primary ones that have been breaking down in terms of coordination, priorities, et cetera.

We're saying on those efforts some top-level group or top management official has to reach down and say, "Everybody will give this the same priority. Here's the direction we're heading." It's an agencywide direction. It's not going to be a fragmented direction, where Atlantic City can assign our priority, Washington can assign a different priority, Oklahoma City another." And that is in fact what we found and documented in our report—many efforts with varying priorities in different organizational components. Either we're moving forward or we're not moving forward, and with what priority?

The same thing with coordination. Congressman Levitas cited an example earlier this morning, an issue of coordination, that the primary people in one organizational component who were supposed to be involved in a project didn't even know of it until it appeared in an FAA newsletter. That's an actual case.

Those kinds of things involving multiorganizational components are the kinds of ones we believe have got to be focused more clearly at the Administrator's level, through a group, through a new organizational component. There's varying alternatives. This was the preferred one in our minds.

Mr. **Anderson**. I thought that would be your answer. So in other words you are talking about a general group and a management group totally separate from this one we heard recommended a moment ago, that would be actually to replace the designated reps?

Mr. **Morahan**. I believe so.

Mr. **Anderson**. Thank you, Mr. Chairman.

Mr. **Fary**. Mr. Levitas?

Mr. **Levitas**. Thank you, Mr. Birkle, for your participation. Before I get into some of my specific questions, I want to make the observation that contrary to the suggestion that my legislative proposal is my answer to the problems of the FAA, I have over the last 2 days on at least five occasions asserted that I do not believe that simply separating the safety functions is the answer. I think it is a beginning. It's sort of like dusting off something so you can see what it looks like and identify what the problems are. So I want to again, for the sixth time, say I don't believe simply stripping off nonsafety functions is the answer. It think it is an essential first step.

I am interested, over the last several days, to see the passionate defense of FAA by some of my colleagues on this committee, defense of a record which is shabby, and the statements of the Administrator, Mr. Bond, that his problems are a result of inadequate funding because Congress won't appropriate the money, when the members of this committee and Mr. Bond both know that they haven't requested the funds out of that $3 billion surplus. There must be—there are, I am sure, good reasons for that.

Mr. Birkle, how many man-hours did GAO put into the development of this report?

Mr. **Birkle**. We devoted about 6 staff-years to this assignment. We had about seven to eight people working on it at various times. The assignment from the beginning of the scoping phase and survey work, to completion, ran about 15 months, 6 staff-years of effort.

Mr. **Levitas**. How many individuals were interviewed and questioned by personnel from GAO?

Mr. **Birkle**. Would you do that, Ed?

Mr. **Morahan**. Well, it's certainly in excess of 100. I mean, that's just people within FAA. We interviewed another 100 or so former FAA officials, including every former Administrator save one, and all of the interest groups.

Mr. **Levitas**. In this report which you developed and released last February, based on my usual review of GAO reports that come into my office, it seems to be a rather lengthy report. Is there any quantity of backup material that would verify or substantiate or corroborate the information you provided?

Mr. **Birkle**. Well, we have an extensive volume of work papers that we assembled and prepared during the course of the audit which would support what we have in the report. We go through a referencing process to make sure that everything we say in the report can be tied in and supported to those working papers.

Mr. **Levitas**. I know that you recognized that this was going to be a controversial report when it would be issued. Prior to the issuance of your report and final recommendations, did you seek the comments of the Federal Aviation Administration, the Department of Transportation, and take into account their comments upon your initial conclusions and recommendations?

Mr. **Birkle**. Yes, sir. This is a standard requirement on all GAO audits, unless the person making the request specifically asks us not to do that. We did take into consideration the agencies comments on the draft report, and as we indicated in our report, we were somewhat disappointed in that FAA and DOT did not comment specifically on our conclusions and specific recommendations.

After the report was issued, they had to respond within 60 days to the issued report, and that letter was a little bit more favorable. It sounded like somewhat more receptive to dealing with our specific recommendations, but then yesterday the Administrator of FAA did not seem to indicate that he was going to deal very specifically with our recommendations.

Mr. **Levitas**. I think you are understating his comments yesterday. I think he equated GAO's approach to problem-solving with the problems that New York City had. He just doesn't think much of management systems of the sort you're recommending. Was that the sense that you got yesterday?

Mr. **Birkle**. I wasn't here myself, but that's what I have been told that he said.

Mr. **Levitas**. Well, as far as I am concerned, Mr. Bond's credibility is not at a very high level in light of some of the remarks he has made recently, and I am not surprised that he would not take seriously a report of the depth, meticulousness, and care that the General Accounting Office, being an arm of Congress has prepared on this matter.

Let me go into a couple of specific areas which have concerned me, and which have led me, not as a final solution or an ultimate panacea but as a first step, to propose legislation to make certain that FAA knows what its responsibilities are. You conclude that FAA's actions in dealing with individual safety problems are perceived to be reactive instead of anticipatory. Those are your words, or the words of the General Accounting Office. I perhaps overstate and explain what that means to me. By saying that generally, FAA deals with a problem after there is a crash, and there are some graves that are still warm when they begin to deal with the problem rather than anticipating and avoiding the problem. What were you referring to when you make that statement, that FAA's actions in dealing with individual safety problems are perceived to be reactive instead of anticipatory?

Mr. **Birkle**. Well, a couple of examples we cited in our testimony would be along those lines: The child restraint system, where they were dealing with the problem and then they stopped dealing with it, and then they started again after a couple of infants died in Portland, Oreg. And then another one was the midair collision in San Diego. That problem suddenly became important and they started dealing with it after the disaster happened.

Mr. **Morahan**. Of course, perceptions are made by human beings and what happened in these numerous interviews that we conducted external to FAA and in reading documentation that had been prepared over the years, hearings before this and other committees, articles in journals, magazines, we did an extensive literature search, and in our conversations with these people in the interest groups and many other factions, this reactive issue continually came up.

Mr. **Levitas**. Is this problem, the reactive rather than the anticipatory approach, the major underpinning of your proposal—first of all, your conclusion that FAA does not have an effective system for identifying safety hazards, and your proposal that there be an office within FAA whose responsibility it is to bring together those clues, those symptoms, those indications that a potential problem may exist; for example, if there was such a system in place in the FAA which would have compiled and coordinated in one place the types of reports which were being received about cracks in the pylon of the DC-10, that this might have triggered an alarm bell someplace in FAA? Is that what you're referring to?

Mr. **Morahan**. Well, that was under our section on hazard identification systems, but going beyond that, what we're really talking about is a total system for management control. I understand and I can recognize what the Administrator was saying here yesterday, and even in conversations we have had with him during the course of this study, that you're talking process, GAO; you're not talking results. That's not true. We were talking results from the first moment we took on the assignment, because there's no sense correcting a process that is creating positive results and consistently so.

So the first thing that we identified were results, either unsolved safety problems that they've been working on for years, or a lack of timeliness, or safety projects not being worked on at all. That was the alert mechanism for us to say, "Wait a minute, there's something wrong. Let's now go back and look at the process and see what is causing that to occur." That's how we got process-oriented.

Mr. **Birkle**. And the lack of such a system causes them to be reactive rather than anticipatory.

Mr. **Levitas**. Would you repeat that?

Mr. **Birkle**. The lack of such a system probably is the main contributing cause for them to be reactive.

Mr. **Levitas**. So when a Member of Congress, for example, and especially the distinguished chairman of the Aviation Subcommittee of the House Public Works and Transportation Committee, calls up and says to the Administrator, "Hey, what about this problem?" they will deal with that problem?

Mr. **Morahan**. Well, we hope so, especially if it is a problem.

Mr. **Levitas**. But it might have been something that perhaps, given a hazard identification system, might have been brought to the attention of the Administrator before the distinguished chairman of the subcommittee called it to his attention. Is that the thrust of what you're saying?

Mr. **Birkle**. That would be part, yes. That would certainly be able to happen if they had a good system.

Mr. **Levitas**. In your report, you deal with the subject of competing work responsibilities. I suppose that's a euphemism, or to me that's a euphemism for some of the problems that I have with FAA, but to what extent did your audit conclude, or find and then conclude that competing work responsibilities—and by that I assume, competing with safety responsibilities—creates some or any of the problems that FAA has had in the past?

Mr. **Morahan**. Well, sufficient enough for us to address the issue in our report, and for us to register conclusions and recommendations on it. In other words, how do you find something out like that? How would we know that competing work responsibilities are in fact impacting on certain safety projects? Well, I'll tell you this: You don't find out by looking at documentation within the agency, because no such documentation exists, not only on that but on many other matters.

So you only find out in one way. We interviewed the officials responsible for performing the work. So this whole section is based upon the view of the FAA individuals, and it's not our view at all. We are just registering facts. When you talk to someone, we say, "Well, how come you haven't finished this?" He says, "Well, they've had me detailed on something else for 3 months." We say, "Well, isn't this important?" He says, "Well, yes, this is a high-priority project." It's the individuals themselves that told us this information. It's not captured for the record anywhere.

Mr. **Levitas**. Mr. Bond's deprecation of providing what he called a paper trail was based upon the fact, he said, that "It's going to mean more paperwork." Now let's assume that one of the great misfortunes to the aviation industry occurs and in the next 4 years Mr. Bond is no longer the Administrator of FAA. How would his successor be able to come in and start off within the first few weeks, and know just precisely what the status of situations were, their priorities, the workload that was assigned, in the absence of procedures of that sort?

Mr. **Birkle**. Well, this is the very thing we were complaining about, that he would be severely hampered by the lack of documentation and records to identify all those things, and he would have to rely on discussions with people who were knowledgeable in those areas, and hopefully, they would be able to remember things; that is, if they hadn't left when Mr. Bond left, they would be there to help him. But there were just too many ifs, in that kind of an arrangement, which is why we felt that they should have a good system to do this for them.

Mr. **Morahan**. If FAA were an organization that had no staff turnover and the key individuals were always there in the right numbers and didn't leave, maybe an informal organization style such as this could work. But that is not the case at FAA. There is a significant amount of staff turnover, through retirements, Administrator Bond's field placement program and other programs they have in place, that requires more than the average agency, possibly, the need for documentation to provide the historical trail.

Mr. **Levitas**. You know, as I observed yesterday, Mr. Bond as Administrator of FAA would probably look askance upon any pilot who took off on a flight without filing a flight plan, and yet he appears to be of the opinion that that's the best way to run an agency of 55,000-plus individuals with tremendous responsibilities. In the type of approach that you were able to detect at FAA, in providing inter, intraagency communication to coordinate a directed approach to the solution of problems, what was your conclusion? Is there such a system in effect? Congressman Burton talked about that a little bit this morning.

Mr. **Morahan**. Well, coordination and communication is an individual thing in FAA. There is no system per se that governs the activities of the employees involved in these responsibilities. Sure, they know that it's the desire of top management, but when top management is not looking at you in any systematic way then it's left to the individual. Some projects were not as badly coordinated as others. Some were better planned than others.

Mr. **Levitas**. Well, I have a number of other questions. I want again to commend the Comptroller General for this outstanding report. When I first read it, I said it was a damning indictment of FAA's management of its safety responsibilities. The more I have gotten into it, the more I am convinced that my original comments were an understatement. The attitude of Mr. Bond and others in response to this very meticulous, indepth report, in my judgment borders on negligence, gross negligence, perhaps criminal negligence, and I am fearful that the next time we get some improvement in FAA, unless they begin to put in place some of the recommendations which GAO has recommended, will occur after another 269 people have been incinerated in a fuselage of an airplane. That's not the way to provide safety for the traveling public. Thank you very much.

Mr. Fary. Thank you, Mr. Levitas. Mr. Mineta?

Mr. Mineta. Thank you, Mr. Chairman, and thank you, Mr. Birkle and all of you who have been involved in this report. As I indicated yesterday, I thought this was an excellent management study but I am not sure that it establishes a case for the concern that results in this hearing; of these three bills that we have that say that we ought to be splitting the agency in terms of operations and safety. I recognize that the report is not directed toward that conclusion or to even indicate that.

But I was wondering, in your discussions with former Administrators, did any of them even hint or consider the possibility of the separation of the agency into those two functions, as being a worthwhile approach?

Mr. Morahan. No, not directly. We have another study ongoing now where we've talked to all the former Secretaries of Transportation on a variety of matters, and there is a bit of a theme that comes out. It goes back into history, as to how FAA was originally put into the Department, et cetera, et cetera. They are a relatively autonomous group as it is now, FAA, so in terms of taking them out of the Department and making them a separate agency, some of the Secretaries indicated that they didn't have total control over them in any event, or only partial control. But nothing came out with respect to the separation issue.

Mr. Mineta. Well, I get the feeling, then, when you're an agency of 55,000, 57,000 people, and then you get put under a department that's, let's say, 100,000 strong or not quite 100,000, all of a sudden you become the stepchild of something where you were the greater part of that whole system. I think people in FAA are still smarting from that, being involved as part of a bigger Department of Transportion, where they are the largest motile aspect of that Department. I don't think to this day they have gotten over that. I think they still feel that they probably ought to be a department or independent agency of their own.

I notice that in terms of agency comments, that there is a standard line, and that is that the DOT did not address your specific conclusions and recommendations. That was the standard line throughout each of the conclusions and recommendations you made. Do you have any followthrough on that, when they come back and they have their agency comments? Do you go back to them and say, "Hey, hold it, you're giving us the broad brush treatment on this. What about this specific conclusion and recommendation?"

Mr. Birkle. Yes, we meet with them to try to make sure they understand our message and assist them in any way we can in commenting and trying to expedite their comments. After they make their comments, if they are not responsive, we generally go back and try to find out why. In this case, they chose just not to comment on the specific recommendations. They felt as though the management actions that they were taking, without commenting specifically on what we were suggesting, would be adequate and would take care of things. We didn't back down on any of our conclusions and recommendations based on what they said and we still think they are valid based on our study.

Mr. Mineta. Let's take the specific one on Safety Advisory Group. Other than, "We think what we're doing right now doesn't warrant establishing a Safety Advisory Group," is that their conclusion?

Mr. Morahan. That's their conclusion. They reorganized last summer. That was during the period of our audit. They feel that that reorganization in effect solves the 20-odd problems that we brought to their attention.

There are two separate issues, as we see it. You can reorganize. You can have any organization, but if you don't have people disciplined and operating within some system of management control, no organizational style is going to serve you well. So we feel they are two separate issues. They can reorganize again in 4 more weeks, and that's another organization, that's another way of doing it. You need controls.

Mr. Mineta. And where have you envisioned the Safety Advisory Group being? Where, organizationally?

Mr. Morahan. Well, it's a question of who would it be made up of and who would they report to. We have——

Mr. Mineta. Who would be on the Advisory Group and what would they do?

Mr. Morahan. Associate Administrators or their designees should be the group, and individuals such as Jack Harrison, who is the Director of the Office of Aviation Safety. Presumably he should be on that—on that group. Maybe the head of NAFEC, the head of CAMI, should be that group. Various other directors should possibly be in that group. They, as a collective body of 8 to 10, whatever it might turn out to be, would then sit down and look especially at those efforts that cross organizational lines, where they have had various disagreements in the past, where people are working at cross-purposes, possibly, or not, certainly, with the same priority. And let's try to bring some reasoning to each individual effort at that level. They don't normally have time to get into the individal efforts, or bless them, or sign off on a plan to approach the efforts, unless there is some problem with it and things blow up. Then they try to bring a better focus to those individual issues. Why wait until then? Why wait until it becomes a problem that has to be surfaced at this level here? That's what we're suggesting, and all—you will find that most of the issues that do tend to surface at your levels here or at the interest group level, are ones that cross organizational lines.

Mr. Hunt. Mr. Mineta, the idea of a top management group to handle such an issue is not new in FAA. They currently have a systems acquisition management process, whereby there is a system requirements group that is composed of top-level officials in the agency. That group is to stay on top of procurement acquisitions, make sure they stay on track and we are getting the right things, holding somebody accountable.

We are proposing a similar type of group for safety issues. I think if we can do it for procurement, we can do it for safety, and I think that is an important thing to remember.

Mr. MINETA. Well, in that case there where you talk about procurement, does that also go back to engineering and development as well?

Mr. HUNT. Yes.

Mr. MINETA. It starts way back there?

Mr. HUNT. Yes.

Mr. MINETA. And then goes all the way through to field deployment?

Mr. HUNT. Right.

Mr. MINETA. So whether it's in Flight Standards or wherever it is within the agency, there is an integrated approach across those departmental lines within the agency, starting back at R. & D. to field deployment?

Mr. HUNT. Right, for those projects that are within the SAM (systems acquisition management) process.

Mr. MINETA. You cite that as an example to FAA——

Mr. HUNT. We include that in our report.

Mr. MINETA [continuing]. And apply that template to other aspects of it, what is their response as to why they can't do it?

Mr. HUNT. Well, in our report we anticipated there would be some reluctance on the agency's part to adopt such a recommendation. When Administrator Bond came onboard there were similar top management groups. I guess the Agency Review Board was one. The executive committee was another one. Those groups were disbanded shortly after he arrived.

I think, as his testimony indicated yesterday, he is relying more on his own judgment and not the judgment of other groups. We want to see that type of collective judgment of people that have been in the agency for a number of years, to deal with the issues of safety. There are too many safety problems that cross lines. The midair collision issue is one example. People in various elements of the organization were dealing with the midair collision problem, but no one ever tried to pull it all together. The approved plan for dealing with the midair collision problem prior to San Diego was dated in the mid to late 1960's. Now after San Diego we get everybody coming together to focus on that issue. We think that a top management group through their collective judgment and experience can do that at a high enough level in the agency that everyone in that agency knows what the safety priorities are.

Mr. MINETA. I haven't come to any kind of a conclusion as to what we should be doing with FAA in terms of these bills that are before us, but I am wondering if what you're saying there doesn't speak against the separation of FAA into two functions.

Mr. BIRKLE. In what way?

Mr. MINETA. In the sense that you are trying to get a systems approach across departmental lines within one agency, knowing that it's already difficult right now as compared to having, let's say, a function that would be in two different departments.

Mr. BIRKLE. That would be a consideration, I think, and there would be a disadvantage in splitting it up. I think a good point was made this morning about the trading off—well, maybe trading off isn't a good word, but considering the safety functions in light of the viability of the airline industry, and you have to bring all those considerations together, and you can't consider one without considering the other.

Mr. **MINETA**. This agency turnover that you had found at FAA, is that any different than the agency turnover in any other department?

Mr. **BIRKLE**. Well, we said it was relatively high. I don't think it was that high compared to others, to cause a great deal of alarm.

Mr. **MINETA**. How do you correct that? Is there a way to correct agency turnover when you have the desired people for upward mobility transferred to another geographical area, whatever the reason for transfers, how do you minimize that and if it's not high as compared to any other agency?

Mr. **MORAHAN**. Well, it's a very difficult thing to minimize and to manage, but in recognition of the criticality of their mission versus the mission of other agencies, especially at the headquarters level where they are supposed to have spokespersons on every major unsolved safety problem, in terms of that particular mission, to us it's even more imperative, compared to other agencies, that they have a real solid basis for determining staffing needs.

Mr. **MINETA**. But when Mr. McMahon is Director of Aviation Safety and wants to become the Regional Administrator in region 6, you're going to say, "Well, I'm sorry, Mr. McMahon, you're going to—we're going to chain you to your desk here for the next 6 years because you're in such a critical position." I mean, you know, it's——

Mr. **MORAHAN**. We would suggest you need a backup, a very capable backup individual to Mr. McMahon in Washington, able to assume the role and to have the documented base so that the new incumbent can go forward without missing a step.

Mr. **MINETA**. Then what about the fact that we have had five or six Administrators of the agency itself, in the relatively short life of the FAA, as well as Secretaries of Transportation. Everyone comes in with their own managerial style. They come in with their own philosophical differences. How do we lock that, given a change in administrations, whatever it might be?

Mr. **BIRKLE**. Well, we would hope that if they had a good management system in place, that new people coming in would be happy with that, and would see how it could benefit them, and how it would help them in doing their job, and that they would use it rather than do away with it or change it.

Mr. **MINETA**. I also get the feeling that what we have now is more centralization as compared to before, where there might have been some decentralization without communications, today there is more centralization of that authority and management experience.

Mr. **BIRKLE**. And knowledge and coordination so that everyone is aware—or, someone at the top is aware of what everyone else is doing and how it relates to the overall priorities of the agency.

Mr. **MORAHAN**. They have chosen to centralize to this extent, that is, the project officer, the leader of the team, whatever you want to call him, is in Washington and available for top management to see his records and to talk to him. That's the extent of centralization. He may be responsible for activities in an FAA component in Oklahoma City, or Atlantic City, where the R. & D. is going on, and it's his responsibility to pull all that information together and continually track the solution process that they are aiming for in terms of a particular hazard.

So whether you have them in Washington or Denver, it doesn't make any difference. We're talking 200, 300 key individuals who are project officers. They can be anywhere. It probably is convenient that they are in Washington. The key thing is that if 50 of them are leaving this year for various reasons, that shouldn't be the end of the track or trail for the effort, or it shouldn't be or remain, static or in status quo for 6 months while you're trying to fill the positions. They are thin in these positions is what we're suggesting in Washington, and it does jeopardize the time limits in which they can complete their work.

Mr. **Mineta**. I can see where you can stabilize that in the private sector, but in the public sector, especially with the Federal Government, you've got class "C" or schedule "C" appointees; you've got civil service career people; and with the possibility of every 4 years a change, even with a good systems template I wonder whether or not we wouldn't be zigzagging down the course in terms of any given decisionmaking stream?

Mr. **Morahan**. I think it's well to keep in mind there's only three or four schedule "C" appointees in the FAA. I think people misunderstand that. Most of the individuals we are talking about are career servants, and when you're talking about career servants—you should have the backfield capability. You should have development and training programs, et cetera, et cetera——

Mr. **Mineta**. Sure.

Mr. **Morahan** [continuing]. And systems to bring people to Washington on a rotation basis, backfill for a year. Let the other guy move out if he wishes, but, keep that continuity at the career level.

Mr. **Fary**. Mr. Mineta——

Mr. **Mineta**. Well, I want to thank very much Mr. Birkle and Mr. Hunt and Mr. Morahan. You were the team putting this report together. I think it's a good management study, I really do.

Mr. **Birkle**. Thank you.

Mr. **Mineta**. I want to thank you very much for it.

Thank you, Mr. Chairman.

Mr. **Fary**. Counsel, do you have anything you wish to ask?

Counsel. No.

Mr. **Fary**. The chair will recess pending the vote. Thank you very much, gentlemen, for your testimony. You will be discharged at this time.

[Recess.]

Mr. **Fary**. The subcommittee will be in order.

Our next witness is Mr. Clifton von Kann, senior vice president, operations and airports, Air Transport Association of America.

Mr. **von Kann**. Thank you, Mr. Chairman. My statement has been submitted to the committee. I will just make a few remarks on the high spots and ask that the statement be made part of the record.

Mr. **Fary**. Your entire statement will be made a part of the record.

[Statement referred to follows:]

Statement by Clifton F. von Kann, Senior Vice President, Operations and Airports, Air Transport Association of America

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

My name is Clifton F. von Kann, Senior Vice President, Operations and Airports of the Air Transport Association (ATA), which represents virtually all of the certificated scheduled airlines of the United States.

Because air transportation safety is the highest priority of the airlines, we appreciate the opportunity to join with you in a discussion of this crucial issue, and to comment on a number of bills, the objective of which is the improvement of aviation safety.

On behalf of the airlines, I will suggest what I hope you will agree are constructive recommendations for changes in current law and other measures to improve safety standards that are already the highest in the world. At the outset, however, I wish to state that the fundamental element of safety is today, as it has been throughout the more than half century of commercial aviation history, people. Good laws and effective practice and procedures are, of course, essential. But what counts above all are the professionalism and dedication of people in all phases of aviation.

Earlier this year, the airlines, through the Air Transport Association, were pleased to provide total cooperation to the Committee on FAA Airworthiness Certification Procedures, more familiarly known as the Blue Ribbon Panel on Improving Aircraft Safety, created by the National Research Council at the request of the Secretary of Transportation, and headed by George M. Low, President of Rensselaer Polytechnic Institute. ATA believes the Blue Ribbon Panel has made a notable contribution to improved safety, particularly in illuminating the need for optimum use of people by the Federal Aviation Administration (FAA), the manufacturers and the airlines.

Also, ATA has given careful consideration to the studies relating to aviation safety which have been conducted by the General Accounting Office, notably as related to the management of the FAA, and also to airway congestion and airport access resulting from the burgeoning growth of general aviation.

The airline safety record is excellent. It can be made better. Complacency must be avoided, and the work of this committee and other cognizant committees of the Congress will help make certain that there is no letdown in the ceaseless effort for improved safety.

Proposed Legislation

Let me turn now to the three bills before the Subcommittee.

H.R. 351 would remove FAA from the Department of Transportation and reestablish FAA as an independent agency, virtually as it was from 1958 to 1968. H.R. 6771 would transfer from the existing FAA to the Department of Transportation those functions which the Secretary classified as not pertaining to aviation safety. H.R. 7850 also splits the so-called safety and non-safety functions of FAA and places the former under a new independent Air Safety Administration, leaving the latter -- generally the operations of the air traffic control system and airport grants -- in the Department under a new Aviation Operations Administration.

In other words, one bill would leave the FAA intact but remove it from the Department, one would split FAA within the Department, and one would split FAA removing one part from the Department and leaving the other part in place.

Now one must ask precisely what problem these bills are attempting to solve. The current FAA charter is based upon the Federal Aviation Act of 1958, which resulted from extensive study and public discussion and debate among the country's foremost aviation experts. Under this legislation and that which preceded it and its implementation, aviation in the United States achieved world preeminence, and FAA became the world's leading civil aviation authority.

The nation's air transport system is widely recognized as the safest and most advanced form of public transportation. The airlines have a legal and moral responsibility to promote safety, and the growth of air transportation has depended above all else on the fulfillment of these responsibilities.

Thus, over the past thirty years, no matter how it is measured, scheduled airline safety has improved dramatically as indicated in the table below:

U.S. SCHEDULED DOMESTIC AND INTERNATIONAL PASSENGER SERVICE

	Fatal Accidents per Million Aircraft Miles	Passenger Fatalities per Million Aircraft Miles	Fatal Accidents per 100,000 Aircraft Departures
1950-54	0.012	0.210	0.247
1955.59	0.008	0.178	0.190
1960-64	0.007	0.183	0.189
1965-69	0.004	0.107	0.160
1970-74	0.003	0.084	0.113
1975-79	0.001	0.037	0.060

Source: National Transportation Safety Board.

With these safety achievements in mind, but recognizing that there is always room for improvement, the airlines believe that careful and comprehensive consideration must be given to any fundamental changes in current law, namely the Federal Aviation Act.

Specifically, any rechartering of FAA should occur only after public discussion at least as extensive as that which led to the Act of 1958. The airlines therefore do not believe that it is feasible, in only 120 days, as proposed in H.R. 6771, to conduct a complete analysis of FAA's complex structure; nor do we consider that the breakdown proposed in H.R. 7850 can be accepted as a means for improving safety. It is also not clear that major organizational changes such as these would solve the problems that were cited when these bills were introduced. If FAA management has not performed in a manner to reassure the Congress on its conerns, there would seem to be other answers than radical organizational surgery.

For one thing, ATA questions the practicability and desirability of attempting to classify rigidly and divide arbitrarily the safety-related and non-safety related responsibilities of the FAA, as H.R. 6771 and H.R. 7850 would do. Such categorization could be subjected to special interest pressures and influences, and would to a large extent be artificial since virtually all of FAA's activities in some way relate to the paramount responsibility for safety. Then there is the likelihood that efforts to split safety and non-safety tasks of FAA, if not carefully and exquisitely defined following full public discussion, would result in costly duplication, additional government personnel and increased costs -- with no improvement in safety.

Careful examination of this issue by all interested parties -- and, of course, I include here the general public -- could lead to a conclusion that safety and non-safety tasks are so interrelated and inseparable that lack of total cooperation between DOT and FAA, as has sometimes occurred in the past, might be detrimental to civil aviation safety.

ATA is also concerned that there could be opportunities for "buck passing" in situations -- certain to arise -- where it could not be explicitly determined that a particular matter is a safety or non-safety decision. We think such confusion would be harmful.

Finally there is the possibility that in a division of responsibilities Congressional oversight of safety would be made more difficult and less valuable. Such a division would be a direct reversal of the philosophy underlying the Act of 1958. The rock-bottom conclusion of that historic legislation was that civil aviation should be supervised by a single independent Administrator whose predominant responsibility would be safety. This legislative concept, time-tested and proven, recognized that technological leadership was a key element in aviation safety. That is the basic reason -- safety, not economic advantage -- why the Administrator was charged with the promotion of civil aeronautics.

Regrettably, as time has passed and aviation has grown, the word "promotion" frequently is misinterpreted as meaning the advancement of the economic well-being of the aviation industry. The legislative history and the actions of FAA Administrators do not support this erroneous view or the equally mistaken belief that a decline in airline economic fortunes can adversely affect safety. The fact is that safety is essential for the growth and strength of air transportation.

If there has been confusion on this matter, that confusion must be eliminated. Therefore, so that there can be no misunderstanding as to the primacy of safety, we recommend that Section 103 be amended by the addition of a new sub-section (a) as follows:

(a) The promotion of safety as the highest priority in air commerce and civil aeronautics.

Existing sub-sections (a) through (e) could then be redesignated as (b) through (f).

On the question raised by H.R. 351 -- whether FAA should be removed from the Department of Transportation -- the airlines have mixed feelings. When the Department was created in 1968, FAA was doing an outstanding job, and its staff was highly qualified and motivated. Thus there was little enthusiasm for the idea of FAA losing its independence. However, recognizing the need for a national transportation policy, the airlines did not oppose the change. Now we are faced with the question whether it would make sense to remove perhaps the most important public transportation mode from the jurisdiction of the cabinet officer charged with transportation policy. Although the idea of an independent FAA is attractive in many ways, ATA does not believe that this issue can be uncoupled from the final implementation of the Blue Ribbon Panel findings which are now under study in DOT.

Improving Safety

We are all interested in improving safety, and the airlines believe that a number of other approaches should be considered.

Before making specific suggestions, it may be helpful to discuss briefly the key elements in the air transportation safety equation. These involve industry responsibilities, government responsibilities and, very importantly, the interrelationships among the various participants.

The industry side of the safety equation involves:

- The technological leadership of the U. S. aerospace industry.
- The operational excellence of the U. S. airlines.

The government side includes:

- Licensing, regulatory, audit and enforcement functions of FAA.

- Measures by FAA to insure a safe and efficient operating environment.

- Expert accident investigation by the National Transportation Safety Board.

Finally, there is the vital need to insure that all these elements work as a team -- with a completely free flow of information, and with all hands working in concert with the public interest.

Technological Leadership

For more than 50 years, U. S. manufacturers have provided the public with the world's safest and best aircraft, and the quality of transport aircraft has been improving steadily. While total perfection always will be elusive, accidents stemming from hardware problems are rare and becoming rarer.

It is noteworthy that the FAA in recent weeks has moved to strengthen its supervision of aircraft certification by establishing centers such as that at Seattle for transport aircraft, that at Boston for engines, and that at Kansas City for general aviation aircraft. These actions to fix and centralize responsibility are progressive steps, and are consistent with the emphasis placed in the Blue Ribbon Panel's report on the need to make the best possible use of available professional talents.

Operational Excellence

As I said earlier, and now wish to repeat, the most important element of air transport safety is PEOPLE -- qualified, trained professionals who are motivated and determined to perform their work flawlessly, day in and day out. Quality is built in at the work station, on the production line, in the maintenance hangar and in the airplane. Airline flight crews and mechanics handle 2,500 aircraft engaged in 13,000 daily departures, and these airline employees must make thousands of decisions that bear on safety every day and must do so correctly. There is no system of government inspection that can observe or inspect everything they do.

The airlines, under law, have the responsibility to bring together aircraft, people and procedures and to operate with "the highest degree of safety in the public interest". I know of no other industry that has a comparable statutory obligation. The fulfillment of this responsibility involves training flight crews, cabin attendants, mechanics and other ground personnel and establishing and carrying out the checks necessary to insure that any actions which might cause unsafe situations are detected and corrected in time to avert problems.

Because air transportation safety depends so essentially on people, the airlines over the years have emphasized the need for human factors research. More work needs to be done, but we are encouraged by the research efforts of both NASA and FAA. Hopefully, these research activities will be expanded, improved and adequately funded.

To insure that the performance of airline people does not depart from its extremely high standards, quality control programs are essential in the interest of safety. As an example, airlines have attempted to give examinations to mechanics on completion of training courses or as a pre-condition for promotion. On occasion this has met with union resistance. Airlines and their unions need to solve this problem so that the public can be assured of the highest standards of performance. There are a number of analogies to this situation in the matter of quality control for flight crews.

The FAA Role

Assigned by law with prime responsibility for aviation safety, FAA has the necessary authority in the Federal Aviation Act to carry out is mission. It licenses or certifies flight crews and mechanics (airmen), aircraft and airports. It promulgates regulations and other directives to establish safety standards. It audits safety through inspection and data analysis, and it enforces adherence to regulations and standards.

Safety depends on a constructive interaction and not a duplication between industry and government. Obviously, there will sometimes be differences among the various elements involved in aviation safety, but in the end, it is always the FAA Administrator who has the final decision and the power to insure that his rulings are followed.

In addition to the Blue Ribbon Panel, the report on February 29, 1980 by the General Accounting Office on "How to Improve FAA's Ability to Deal with Safety Hazards" has also made a contribution to the objective of enhanced aviation safety. The GAO report concluded that FAA lacks an effective system for identifying safety hazards, a comprehensive planning process to address the most significant safety issues, an adequate system for planning and improving individual safety programs, a proper system of controls to govern the implementation phase of safety projects, and sufficient evaluation of safety programs and projects.

The GAO report thus underscores the need for more effective long-range planning by FAA. In this regard, during recent testimony on airport and airway legislation, ATA called the attention of the House Aviation Subcommittee to the need for FAA to develop a 10-year plan for adequate airport and airway capacity.

In reviewing FAA's performance the Blue Ribbon Panel noted that the technical expertise of FAA personnel had fallen behind that of their industry counterparts. It recommended that FAA establish a central engineering organization, staffed with technical personnel of the highest competence, responsible for certification and participation in rule making. The airlines support this recommendation. FAA leads the world in aircraft certification, and its capability to do the job should be without question anywhere in the world. However, in their understandable preoccupation with certification the Panel appears to have stopped short of an important related recommendation. The airlines believe and urge that the central engineering organization for the type certification/design change function should be separated from the continuing airworthiness function, i.e., service difficulties, airworthiness directives, and maintenance items which by their nature must be "close to the action" and therefore decentralized. This would be similar to the breakdown between engineering and product support functions in a manufacturing organization. It is further recommended that these two functions be given equal importance, and each should be advisory to the other. No legislative action is required.

FAA can also make a greater contribution to safety by using modern management techniques in the exercise of its audit function. Given the scarcity of technical expertise, both in and out of government, FAA can and should make even more effective use of its designated representatives in industry.

Looking to the future needs of aviation, urgent action is needed to reduce significantly the congestion and delays that adversely affect public service and can impact safety as well. In recent months, the Secretary of Transportation and the FAA Administrator have emphasized their perception that there is a need to restrain aviation activity. This means restraining national economic growth. The airlines hope that there will be a shift of emphasis to a more forward-looking approach that will give a strong commitment to growth. On the ground and in the air, America must not stand still. Meanwhile the Airport/Airway Trust Fund surplus continues to grow while safety facilities which we and other users have recommended have not been acquired.

The airlines also feel that more needs to be done to provide reliever airports to meet the needs of general aviation. FAA's effort to deal with the problem of wake vortices must be moved from top dead center. The same is true for improvements in vertical separation of aircraft, and in metering and spacing. Progress on collision avoidance has been painfully slow, in the face of an alarming number of near-miss reports, although we are encouraged that there now seems to be hope for early progress.

Finally, the airlines are deeply concerned at growing signs of unrest in the air traffic control workforce. We all need to know whether the problem is union militance or something more fundamental, as, for example, inadequate training.

It therefore must be concluded that in matters of management -- be it management of personnel, research, development, procurement, installations or maintenance -- DOT/FAA has serious problems. Further, it would do little good to restate recommendations that we have repeated over the years. What is needed is suggested by the Blue Ribbon Panel itself when it says:

> "While our study was limited to what some have called the safest component of the aviation triad, the airplane itself, the other two elements -- the national aviation system (airports, airways, and air traffic control) and airline flight operations (flight crews, dispatches, meteorological services) -- may need to be subjected to similar examinations."

ATA therefore recommends that serious consideration be given to the convening of a second Blue Ribbon Panel -- one composed this time of experts in system engineering, the research-development-acquisition cycle and management-labor relations in government -- to examine FAA's work in the national aviation system and to determine what is really required to solve the problems I have enumerated.

ATA also supports the emphasis of the Blue Ribbon Panel on improved excellence in FAA people. That objective would indeed be furthered by making the two top positions in FAA non-political posts, just as is the case with the Comptroller General.

The NTSB Role

The proper role of this body is simply stated: "To be the best aircraft accident investigation body in the world". This is an imperative if the United States is to lead in safety and technology. We believe the NTSB fills this role.

Given the accident reports of the NTSB, FAA should take such steps as necessary to prevent recurrences of these accidents. However, the proper preventive action is not always that obvious. Changes in any system must be meshed with interacting systems in place, new hardware must be debugged, and all side effects must be considered. FAA, which has more operational know-how than NTSB, must make these judgements. Besides, NTSB, with its limited knowledge of operations, engineering and maintenance, may not always be right in its recommendations.

In this situation NTSB has often become impatient with FAA, has taken its views to the public, and has sought additional money and people in order to do more work in what would appear to be FAA's field of responsibility and expertise. Such a duplication would be a great mistake, a waste of public money, and would confuse the safety picture. NTSB should continue to be the world's best investigator of accidents and not try to be a second rate FAA.

In short, NTSB is doing an outstanding job in its statutory role. The main problems we see are "people problems". To minimize these and insure that politics is removed from safety issues, ATA recommends that members of the NTSB be selected and screened in the same manner as the Blue Ribbon Panel recommended for FAA Administrators and Deputy Administrators.

Information Exchange and Interfaces

As indicated earlier, the flow of safety information among the various elements of the aviation safety system is the lifeblood of safety. This means that there must be full disclosure of all safety information. Further, the information must be organized and presented in a useful form so that appropriate action is immediately obvious to proper management levels. Some accidents may have been prevented had pertinent safety information that was in the system reached the proper executive, or been intelligible when it did.

ATA reported on the airlines' concern about this to the Blue Ribbon Panel, also the fact that FAA has a program underway to improve the flow of safety information. The Panel recommended that FAA accelerate its development of an effective information gathering and data system. The airlines support the general thrust of this recommendation; however, some of the details on the interaction of the various subsystems need to be clarified. The Committee may wish to review progress from time to time to insure that this important project does not fall behind.

However, even assuming a good system, the flow of safety information will still be inhibited. One major inhibition is fear of litigation. This can be seen at NTSB post-accident hearings. Here is a time when every scrap of information should be brought to light. But what happens in fact is that the lawyers take charge, and the exercise becomes one of posturing the different parties for the litigation which is sure to follow.

Similarly, at these hearings, the unions concentrate on protecting their members from administrative or judicial punishment. Again, what should be the overriding imperative of full disclosure is lost in the shuffle -- and valuable pieces of information are lost, sometimes forever.

The obvious answer is that if safety information can save lives in the future, its revelation should come ahead of all other considerations. The military has long recognized that in air accident investigations, the prime purpose is fact finding, not punishment.

However, we are living in a period when public disclosure of all information has become an overriding imperative -- even if it works against safety. We know of no practical solution to this problem, but suggest that it deserves thoughtful consideration by all of us. It is a problem which should not be ignored.

The airlines are also concerned about certain areas in which there is a disturbing lack of teamwork. I have mentioned the relationship between NTSB and FAA; we see no benefits to safety in the public bickering that goes on between these two agencies. Each has his statutory functions, and each has his contributions to make to system safety. There is no need for FAA to compete with NTSB at the scene of the accident, and no need for NTSB to compete with FAA in accident prevention. At a recent congressional hearing the rivalry between the two agencies was evident. This should not be allowed to continue.

At this same hearing we were shocked at a statement by a high FAA official which indicated that airline chief executive officers weigh the revenues against potential fines in deciding whether to dispatch a plane that is not airworthy. I can state categorically that no responsible airline executive will place his passengers -- along with his reputation and that of his company -- at risk.

However, there sometimes are honest differences of opinion as to what constitutes an airworthy airplane. The criteria for continued airworthiness are contained in the airline manuals, which are required by FAA regulation. If the FAA inspector disagrees with a manual, he has the power to have it changed. Here again the answer lies in good people and good communication between the responsible airline maintenance people and the FAA inspectors.

One of the most effective teamwork mechanisms over the years was the government/industry Task Force. When FAA became aware of a problem, actual or anticipated, it would quickly call together all members of government and industry who could contribute to a solution. Countless problems were solved or avoided by this procedure. Under the Federal Advisory Committee Act, however, the process of assembling a government/industry committee has become so cumbersome and time consuming that this method of problem solving has all but lost its usefulness. On numerous occasions ATA has suggested that government/industry committees should be formed to deal with specific problems, only to be told that the Advisory Committee Act made such a course of action impractical.

I note, however, that under Section 4(b) of the Act, the Central Intelligence Agency and the Federal Reserve System are exempt from its provisions. With the FAA Administrator's responsibility for public safety, I can think of no government official who should have a better right to call committees or task forces together on short notice in order to protect the traveling public. I do not understand why the FAA has not sought an exemption from the provisions of the Advisory Committee Act, but in the

absence of such an effort the airlines hereby recommend that Section 4(b) of the Act be amended by adding:

(3) The Federal Aviation Administration.

The purpose of this recommendation is not to attempt to avoid open meetings but to insure prompt and effective solutions to safety problems.

Conclusion

The Congress is also an essential element of system safety, and this Committee has made many contributions over the years. Wise and forward looking congressional oversight will result in further improvement in the years ahead. However, there is one concern that we feel should be recorded. The airlines are troubled by the fact that oversight of aviation safety seems to be split among a number of committees. The role of the Congress would be played more effectively if the responsibility were in one place.

To conclude, Mr. Chairman, the goal of the airlines is zero accidents and zero fatalities. I have made a number of recommendations which I believe will improve our chances of reaching the goal. Your Committee has been of great help in the past, and its work is deeply appreciated by all who seek improvements in aviation safety. Working together, we have accomplished much; working together, we can do even more.

Mr. **Fary**. Please proceed.

TESTIMONY OF CLIFTON F. VON KANN, SENIOR VICE PRESIDENT, OPERATIONS AND AIRPORTS, AIR TRANSPORT ASSOCIATION OF AMERICA, ACCOMPANIED BY EDWARD L. THOMAS, VICE PRESIDENT OF ENGINEERING

Mr. von **Kann**. Thank you, Mr. Chairman.

To summarize the main points in my statement, we oppose splitting FAA as proposed in H.R. 6771 and H.R. 7850. We feel that the present structure has resulted from an intensive and extensive public discussion involving full participation of all interested parties. It has produced the desired results, and the record continues to improve. Under the single administrator organization, the United States has maintained its preeminence in aviation throughout the world.

We feel the split of FAA would be difficult to accomplish rationally. It would create new and possibly more serious problems such as who would decide on the compromise between safety and other considerations, a point made very well by Mr. Ertel in yesterday's hearing.

It would also appear to allow for buckpassing, which is not likely under the present arrangement.

We also feel that with the split administration of aviation, congressional oversight would become more difficult.

On the subject of the word "promotion," we do not see any problem in the fact that the act includes the word "promotion." We see it as meaning promotion of safety, of technology, of public service, and of U.S. leadership in world aviation; there is nothing wrong in this. However, so that there can be no doubt about the primacy of safety, we have recommended appropriate amending language to section 103 of the act. That language is included in my statement. This language would apparently satisfy the point made on page 93 of the Burton report which was emphasized earlier in the day by Congressman Burton.

Finally, even if the word "promotion" were stricken from the law, the FAA would still be required to consider costs under Executive Order 12044 because available resources still are going to have to be used in the most efficient manner.

We have mixed emotions on the bill which involves the removal of FAA from DOT, H.R. 351. We can see arguments on this side. We have great sympathy for the idea of the independent FAA. FAA did a splendid job when it was independent. It had good morale and talented people. It was a fine agency.

On the other hand, we see many problems in trying to turn back the clock. We feel that this is something that needs to be studied more carefully, probably in conjunction with the final resolution of the recommendations of the blue ribbon panel and the possibility that there may be other panels on the subject of FAA.

In my statement I did not comment on H.R. 6711 because that was not mentioned in the meeting notice. However, we feel very sympathetic toward that bill. The Budget Reform Act had not yet been enacted at the time the aviation trust fund and the airport/airway development program was set up in 1970. Since the trust fund became incorporated in the Government budgetary process, it has not worked well. There are a lot of problems, as you all know. Even though we can see problems in trying to pull a trust fund out of the budgetary process, it has many attractions to us.

To summarize the measures which we feel would improve safety, we feel the need for improved quality control programs for both flight crews and mechanics. This means overcoming union resistance.

We see it desirable—we think it is more than desirable; it is necessary—that the central engineering organization for type certification which was recommended by the blue ribbon panel be paralleled by a decentralized organization for the continuing airworthiness function. As I understood Mr. Frisbee's testimony today, that is consistent with the feelings of the members of the panel.

We have talked a great deal about engineering talent and DER's. Recently I attended a National Academy of Science workshop at Woods Hole, Mass., on the future of NASA aeronautical R. & D. One of the big concerns in NASA as well as here is what seems to be a shortage of aeronautical engineers. In other words, there is a serious resource problem here, and it affects other agencies than FAA. We have got to make do with the available talent. This would seem to spell out making even fuller use of the DER's.

Increased surveillance of DER's must be handled with care. If it means looking over the DER's shoulder and checking all his work, that is not a practical solution. There is an audit system now in the form of spot checks and reviews of DER work and problem areas. If this audit can be improved, as I think Mr. Frisbee was suggesting today, if it can be improved in a meaningful way, then, obviously, this should be done.

We have recommended convening a second blue ribbon panel to examine FAA's work in the national aviation system with particular attention to major problems. One of these would be the status of the computer modernization program. You have heard a great deal about this. It is an item in which the recommendations of PATCO and the other unions that are involved have to be recognized as having some conflict of interest elements. It is to the union's advantage to freeze the pattern for the new computers as quickly as possible. The longer you wait, the better the technology becomes and the more manpower can be saved. I think some expert outside advice on where the optimum point is in this might be sought.

This new panel needs to look at airport and airway capacity with particular attention to the reliever airport problem. It needs to look at some of the more specific problems we have been facing over the years, the wake vortex problem and reduced separation, especially above flight level 290, the whole research development and acquisition process; and certainly this very serious problem of the unrest in the controller work force.

You will recall that the blue ribbon panel indicated that there might very well be additional panels, and the first area that was suggested was this cluster of problems. We certainly go along with that idea.

We agree with the idea of establishing the post of the administrator, and the deputy administrator on a nonpolitical basis. We would also add to that the members of NTSB as nonpolitical appointments.

We would want to see the FAA project to improve the flow of safety information expedited.

In my statement I mention the very serious problem of the effect of litigation on the flow of safety information. Mr. Chairman, we do not know the answer to that problem, but it is a fundamental problem. It does interfere with the flow of safety information. It is one which should be tackled and solved. Very possibly, it might be worth a hearing to consider this single subject.

We recommend amending the Federal Advisory Committee Act to exempt FAA. The Federal Advisory Committee Act was the principal reason why it took such a long time to get the SAFER committee started. This has delayed a number of actions to bring together expert groups to tackle important safety problems. The Central Intelligence Agency and the Federal Reserve System are expressly exempted under the act, and we think FAA should also be exempt with their stake in public safety.

Finally, we would like to suggest respectfully that it would make life easier if there could be a resolution of what now seems to be a split responsibility in the House for aviation safety.

My statement, Mr. Chairman, attempts to explain how the system works and what we think is needed to help it work even better. The essence of airline safety is best described on page ten of my statement. Let me read this passage; it is a short one.

> As I said earlier, and now wish to repeat, the most important element of air transport safety is people, qualified, trained professionals who are motivated and determined to perform their work flawlessly day in and day out. Quality is built in at the work station, on the production line, in the maintenance hangar and in the airplane. There is no system of government inspection that can observe or inspect everything these people do.

So, Mr. Chairman, while we concern ourselves about FAA—and there are many reasons to—about the DER's, about the loss of top-notch technical competence in FAA's people, about the many administrators who have passed through its doors, the airlines and their people have continued to do their job, have met their statutory and moral obligations, and have steadily improved the safety record. And they are continuing to seek further improvement.

My recommendations are aimed at what we think is needed to get the job done better. For this reason, I must take exception to Mr. Matsui's innuendo of yesterday that the airlines want the DC-9-80 in the air now regardless. Mr. Chairman, no airline executive wants to fly a plane that is not proven to be safe and has not satisfied the FAA as well as its own engineers. Mr. Matsui's remarks were wrong, irresponsible, and reflect complete ignorance of how the system works.

Mr. Chairman, I am prepared to answer your questions.

Mr. FARY. Thank you, Mr. von Kann.

Do you agree with Administrator Bond's statement about the need for more people in FAA with political orientation?

Mr. VON KANN. No, Mr. Chairman, I really do not. I can see why the administrator wants to have people who are politically sophisticated and can deal with the maze of Washington politics and bureaucracy. But, at the same time, it is terribly important that he have people who know how the system works, who have experience working with the system, and who have the kind of technical knowledge the blue ribbon panel was emphasizing.

Apparently there has been some deterioration on that side of it. I think that is as important, or even more important, than this matter of political sophistication.

Mr. **FARY**. Do you agree with the procedure recommended by the Low committee for the selection of future FAA Administrators and Deputy Administrators?

Mr. **VON KANN**. Well, we certainly agree with the principle that was involved. I think the procedure needs to be worked out with more care. As a matter of fact, when the Low committee report was published, we studied the procedure which the American Bar Association uses in screening slates of proposed Federal judges, including the Supreme Court Justices. We think that probably a screening procedure of that kind needs to be spelled out.

For a number of reasons, we did not try to put all that in the testimony. If the committee is interested, we could put our version, you might say, of the ABA procedure in for the record. But the objective of appointments which are not primarily political and which are based on a very serious scrutiny of the candidate's professional expertise, integrity, and record are very important; and we think that this should apply to the members of NTSB as well as the Administrator and his Deputy.

Mr. **FARY**. Do you agree with Administrator Bond's emphasis on punishment and reward?

Mr. **VON KANN**. No, sir, we do not. We think that the Administrator is giving much too much emphasis to punishment and publicity about punishment.

I speak now as an individual who has been deeply involved in aviation safety both in the military and the civil system for almost 25 years. It has been conclusively determined in all the military services, and was pretty well accepted on the civil side as well, that the most important thing about dealing with safety matters is to determine all the facts, what brought about an incident or an accident. It has also been determined by experience that, when the individuals with this knowledge are under the threat of punishment, your sources of information dry up. People just are not going to talk about things that are going to put them in jeopardy of administrative or even possibly of criminal punishment.

Therefore, if you emphasize punishment, you are starting to undermine the most important thing in safety, which is finding out what caused the incident or finding out what caused the accident.

So, we feel that this time-honored approach is the important one and that we are concerned about the Administrator's emphasis on punishment and publicity.

Mr. **FARY**. Do you agree with the conclusions of the GAO report that FAA has not done an effective job in planning and establishing priorities for its rulemaking activities?

Mr. **VON KANN**. We are on record right now before this committee in connection with the recent hearings on the Airport/Airway Development Act extension or renewal. We are on record as recommending that FAA be required to submit a 10-year plan, year in and year out. So, we are strongly in favor of better planning and programing in FAA, particularly one aimed at providing the necessary airport and airway capacity to meet the demands of the public.

On priorities, I think that needs to be better defined. If you try to go down and put a priority on every project, the fact of the matter is that in a place like Washington you are going to be forced to change them from day to day. I would prefer some overall priorities—and safety has to be the first priority. I have recommended a change in the language of the Federal Aviation Act; that would leave no doubt about that. A very high priority then has to be given to the matter of providing an airport/airway environment to meet the public demand.

I think, if you use your priorities in broad packages like that, it makes a good deal of sense.

Mr. FARY. In your testimony you cite the enactment of the Federal Aviation Act of 1958 in which a single agency, FAA, was given responsibility for all aspects of safety, both regulatory and operational.

Are you familiar with the situation before 1958, when CAB regulated safety and FAA's predecessor had the operational responsibilities? What problems were created by this split authority?

Mr. VON KANN. I was in the military at that point, and I was not as familiar with the civil aviation system as I am now. I would be happy to look into that matter and attempt to answer it for the record.

Mr. FARY. I would appreciate it if you will.

[The following was received for the record:]

Air Transport Association OF AMERICA

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September 3, 1980

The Honorable Glenn Anderson
Chairman
House Aviation Subcommittee
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

When I appeared before the House Aviation Subcommittee at its hearing on August 21, 1980, Congressman Mineta asked me how the Air Transport Association had regarded government supervision of aviation safety prior to the enactment of the Federal Aviation Act of 1958 at which time supervision and regulation of aviation was split between the Civil Aeronautics Administration and the Civil Aeronautics Board. This letter comprises my response for the record.

In the pre-1958 arrangement the Civil Aeronautics Administration administered such matters as operational specifications and certification while the Civil Aeronautics Board promulgated economic and safety regulations. In addition, the Civil Aeronautics Board handled accident investigations; this function was later transferred to the National Transportation Safety Board when the Department of Transportation was formed in 1968.

While the above arrangement is not proposed in either H.R. 6771 or H.R. 7850, the airlines did not consider it a very satisfactory organization. Since the Civil Aeronautics Board consisted of 5 men, there were many splits on safety matters and no single point of responsibility for decisions made. Further, the safety function itself was split between the Civil Aeronautics Board and the Civil Aeronautics Administration. In short, there was no one person responsible for aviation safety. For this and other reasons the philosophy incorporated in the Act of 1958 was that there should be a single individual responsible for all aspects of aviation safety, thus bringing authority and responsibility into balance.

The Honorable Glenn Anderson
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As I have noted the two bills above do not propose a return to the pre-1958 set up. However, it is our strong belief that any splitting up of FAA would tend to confuse the question of accountability for safety and would slow down the processing of any safety-related regulations.

Sincerely,

Clifton F. von Karn

Clifton F. von Karn
Senior Vice President
Operations and Airports

cc: The Honorable N. Mineta
The Honorable G. Snyder

Mr. FARY. Do you think that an independent FAA would be able to make higher requests for safety funding than FAA can under the present arrangement, where all requests go through DOT?

Mr. VON KANN. Well, I think, if you couple that with the concept in H.R. 7611, it ought to work better.

As was brought out several times yesterday by Congressman Goldwater and others as well, the traveling public has been paying for 10 years an 8-percent tax on passenger transportation, 5 percent on freight, and then you have the international departure charge. That money has been going into a fund which was supposed to be used for primarily capital investment in safety facilities.

There is an argument about how much of it should go into O. & M., but there is not much question that the primary, priority for that money is safety facilities.

Now, the money has not been flowing through. It has been building up in the trust fund. Yet, almost every user of the system agrees that they would like to see more go into these facilities, including the Administrator himself, if I read him correctly.

So, I would have to assume that, under that arrangement, and with that change in the budgetary flow, the funds ought to flow more freely.

Mr. FARY. You contend that NTSB is seeking money and people to do work in FAA's field of responsibility. Could you elaborate on the areas in which NTSB is seeking to expand?

Mr. VON KANN. Over the years, NTSB has requested more money in the so-called accident-prevention area. Now, I recognize that you cannot make a hard and fast line between accident prevention and accident investigation, and certainly the investigation has a great deal to do with accident prevention. But I think the line ought to stop at the recommendation point. When you get into the carrying out of the recommendations, you then get into the need for a great deal of knowledge of how the system works.

It might seem fine to say that you ought to put some kind of another noisemaker in the cockpit to alert the pilot to this or that thing, but you have to integrate that with all the other buzzers and bells and things that sound off. FAA, working with the operators, has got to be the place where this is done.

So, it seems to me that, in granting NTSB's overall responsibilities, and giving them full credit for being the finest accident investigation organization in the world, which I do, I just do not think that they should go much beyond the recommendation phase.

Mr. **Fary**. Yesterday there was considerable discussion of the delays in FAA's rulemaking on cabin safety. Does ATA feel that there have been unreasonable delays in this area?

Mr. **von Kann**. I think, Mr. Chairman, in relation to the discussion we had on the SAFER committee, this applies. Now, we have been concerned for a long time about cabin safety and what kind of rulemaking should be done to try to address the problem. There was an industry group at work several years ago, and then the activity was challenged, I believe, by ACAP who invoked the Federal Advisory Committee Act.

After a long time, using the provisions of the Act, the SAFER group was finally put together. There was a delay of 2 years, 2 years just meeting the terms of the Federal Advisory Committee Act. That is why I feel so strongly that FAA should be exempted from the provisions of that Act.

That is one of the biggest reasons for the delay. There is no quick solution here because we are dealing with a tremendously complicated technical problem. It is not even clear to the experts at this point what the principal direction of the effort should be. There have been no fires this year because there have been no crashes this year. We had the United crash, I think, in Portland last year. Because the fuel was exhausted, there was no fire.

This suggests that maybe our main effort here ought to be going into the question of the fuel and something to make the fuel explosion less likely, some possible solution like fuel misting rather than worrying about cabin materials which become an issue only when you have a tremendous fuel fire to get things started.

So, we have had an administrative problem in the past in getting things started. Now you are up against a very serious technical problem.

Mr. **Fary**. Thank you very much. Mr. Mineta?

Mr. **Mineta**. Thank you, General von Kann, for your presentation.

You talk about the establishment of a central engineering organization at FAA. This was the recommendation of the blue ribbon panel. Given the salary schedules and some of the other kinds of limitations that are on Federal employees, is it possible to go ahead and do something of this nature?

I can understand why we need it, but I am just wondering whether or not we have some proscriptions that will prevent us from establishing something of this nature.

Mr. **von Kann**. Well, I do not claim to have gone into the salary part of it as carefully as the blue ribbon panel did. I certainly take Mr. Frisbee's remarks on that subject at his word, and tend to feel myself in agreement. We have talked to some members of the panel about this. It is one of the most interesting and in some ways innovative thoughts.

You come up against the conclusion—and you cannot argue with it—that, if you could draw in a few people who were highly regarded, such as your top NASA people, then they in turn would attract some of the good engineering people because of the challenge and the excitement; and there would be a good deal of distinction to being a member of that organization.

It is not going to be easy. As I say, your engineering resources are thin in this country right now. Top engineers can make outstandingly good salaries in industry. But we think the idea has enough of a chance that we ought to give it a try.

Mr. MINETA. What about the FAA, let's say, contracting with something like the Aerospace Corp., which is a quasi-governmental agency doing work?

Mr. VON KANN. I would say that might be a backup if the solution proposed by the panel proved not to be viable and proved not to work. In other words, they will make an effort, and either they will or they will not attract the kind of talent they want. If they cannot attract that kind of talent, then I think they are going to have to go out and buy it on the market, and probably some solution such as you suggest would be the way to do it.

Mr. MINETA. Have you looked at the recommendation of GAO on the establishment of a safety advisory group?

Mr. VON KANN. Yes, I have.

Mr. MINETA. Do you have any thoughts on that?

Mr. VON KANN. Well, yes, I have these thoughts. I was impressed by the remark today from the GAO people which came late in their testimony about the disappearance of these advisory groups that used to exist in FAA and now it is down to a very small number.

I would certainly think that a lot of thought ought to be given to reestablishing key management groups in FAA. I think the disappearance of those groups is probably responsible for some of FAA's problems these days. There does not seem to be the dissemination of information. The word does not seem to permeate through the ranks at all times. I think groupings of this nature would be helpful.

I think the safety advisory group would be useful in bringing a balance into safety recommendations.

You know, the GAO report talked about FAA getting out in front and anticipating problems. Now, this sounds very good, but that is exactly what everyone is trying to do now. In the airlines we have our best brains trying to look ahead and anticipate problems, making modifications in the equipment and procedures that will help solve them.

You certainly have the manufacturers doing this with all the brains they can muster. FAA has come out with literally hundreds of rulemaking proposals which have this objective. Some of them were good, and some of them were not so good.

If you say that you do not have the best talent in the world in FAA, then you cannot turn around the next minute and say: well, they should be omniscient and able to anticipate all these things. You cannot have it both ways.

I do not think they should be accused of not trying because you have hundreds of people in FAA working up hundreds of rulemaking projects that are trying to anticipate problems.

Mr. **Mineta**. What was the nature of this Government-industry task force that you mentioned?

Mr. **von Kann**. I would like to ask Mr. Thomas, our Vice President of Engineering, who is in the audience, to come and answer that. He was a member of that task force, and he is also a member of the SAFER committee. He could give better detail than I.

Mr. **Thomas**. I must apologize. I did not hear the question, Mr. Mineta.

Mr. **Mineta**. I was wondering the nature of the Government-industry task force that existed evidently at one time.

Mr. **Thomas**. This goes back a number of years. There were a series of FAA proposed regulations on cabin interior materials which we had commented on. One of the things that we kept trying to stress all of the time, which was ultimately recognized by FAA, was that they were attempting to attack the cabin interior materials in three separate pieces of regulation: one on flammability, one on toxicity, and one on smoke. We were attempting to convince them that you had to consider all of these as a package.

In mid-1976, there was an informal FAA-industry task force established on cabin interior materials. This involved people from the airlines, the manufacturers, the materials manufacturers, NASA, and others. We were in the process of formulating a program at that time.

Subsequently, it was determined that this informal task force was not in compliance with the Federal Advisory Committee Act. Therefore, it would have to be disbanded or formalized. In 1977 FAA held hearings on these rules. At that time we recommended that the task force be reestablished. Whether it had to be formal or not, we did not care, but we wanted to get the task force reconstituted.

Subsequently, the task force was reconstituted. It was established first, I believe, in——

Mr. **von Kann**. It was announced on June 12, 1978.

Mr. **Thomas**. The fact that the task force was established was announced on that day. However, because of the procedures that the Department of Transportation has to establish such a task force, which apparently has to go through OMB and everything, it took some 11 months for that task force to have its first meeting after it was established.

Mr. **von Kann**. That was from June 12, 1978 to May 10 and 11, 1979.

Mr. **Thomas**. The task force had a 2-year life, which was up as of June 30 this year. So, 11 months of that life disappeared.

It may not necessarily be the fault of the Federal Advisory Committee Act per se, but rather the procedures that you have to go through to get such a committee established.

On the other hand, because the Federal Advisory Committee Act is the way that it is, these procedures must be established in the various agencies.

We feel very strongly that we are not trying to have closed-door meetings of these informal task forces. But what we want to do is to say: there is a problem; let's get everybody together who can provide solutions to that problem; and let's get with it. But we cannot do that because they have to, first of all, get approval to establish such a task force and then have to go through all of the procedures to get a task force.

They have to consider whether or not they have the proper balance on the task force. This is a technical task force, but in the questionnaire that I was given when I was asked to serve on the task force, I had to answer as to my race, my political affiliation, my sex. There was very little about what my technical qualifications were. I think that this is a problem in trying to establish a task force which was attempting to attack what was considered a safety problem.

Mr. MINETA. That task force is what we know today as the SAFER committee?

Mr. THOMAS. That is the SAFER committee, yes.

Mr. MINETA. Have you finally submitted the report to the Administrator?

Mr. THOMAS. I checked with the SAFER committee chairman's office yesterday. The final report has not been submitted to the Administrator yet. It has been going through an iteration process of editing and correcting.

Mr. MINETA. It is still with the SAFER committee?

Mr. THOMAS. It is still with the chairman of the SAFER committee. The SAFER committee itself does not have the report. It is with the chairman, who is working with FAA and trying to get it typed up and edited so that they can get it to the Administrator.

Mr. MINETA. Did they indicate yesterday when that would be submitted?

Mr. THOMAS. I would not hold the SAFER committee chairman to this, but I was advised that it could be either before the end of this week or the first part of next week when the final draft would be submitted to the Administrator.

Mr. MINETA. Thank you. General von Kann, let me ask very quickly about the people problems that you alluded to. Is there anything specific about the people problems that you feel ought to be addressed?

Mr. VON KANN. Do you mean with NTSB and FAA?

Mr. MINETA. Yes.

Mr. VON KANN. Well, it is pretty much a matter of public record. I believe there was a hearing with this committee not too long ago on the matter of the SAFER report. There were some rather sharp exchanges.

It just seems to us that right now there is a little bit too much of NTSB criticizing FAA. FAA does not do everything right. They make a lot of mistakes, as the Administrator admitted. But, on the other hand, when it comes to implementing a safety recommendation, they are the ones that have to put all the considerations together.

I think we would like to see NTSB, having made its findings, made its recommendations, then show a little more tolerance for FAA and the problems it has getting things done, which the Administrator discussed yesterday.

Mr. **Mineta**. I have one last question. On page 21 you express a concern about the fact that oversight of aviation safety is in so many committees. Do you have any recommendations as to how that might be avoided?

Mr. **von Kann**. Well, I feel it more than ever after this morning, Mr. Mineta, but I am not sure that I have the answer to that. There are a couple of problems I do not think I have very good answers for, and that would have to be one of them.

Mr. **Mineta**. Thank you, gentlemen. Thank you, Mr. Chairman.

Mr. **Fary**. Mr. Hutchinson, do you have any questions?

Mr. **Hutchinson**. General, we appreciate your being with us. We are sorry today has been a hurry-up-and-wait situation, which I am sure you are aware of.

In the report, do you concur with the statement that the technical competence in the FAA relating to the designated reps is lesser than it is in the industry? Or do you maybe subscribe that we have people who are competent to do the job who are just not turned on?

Mr. **von Kann**. I think there is a little bit of both.

You said in reference to the DER's. What I have in mind is the general finding that the technical people in FAA were not up to their old standards.

Mr. **Hutchinson**. These were the people who were doing the certification.

Mr. **von Kann**. Oh, I see your point.

I think there are some morale problems in FAA. I think the points that were discussed here today with the GAO group, the lack of many of these coordinating groups and just the question of people being in the chain of command getting the word, all of those sorts of leadership techniques, may have left something to be desired.

There has been a lot of turnover in FAA during the past few years. Many of the old hands have retired. There are undoubtedly some problems of morale and people really putting out, being turned on, as you say. That is one reason why I think the blue ribbon panel idea of the central engineering organization has appeal because it might be a way to get people turned on again.

On the other hand, I do keep coming back to the point that you have to have an organization such as FAA. They have to exercise the regulatory functions, the audit functions, the ones that are enumerated in my paper. But, on the other hand, the job of producing safety—if you want to call it a product—is really something which we as the operators have to do. The law recognizes our responsibility for that. That is section 601B of the act.

Mr. **Hutchinson**. Thank you very much, sir. I have no further questions.

Mr. **Fary**. That will conclude your part of the testimony, Mr. von Kann.

The chair will recess now for at least 15 minutes pending a vote. We will be back as soon as we can. We will hear from the airline pilots.

Mr. **von Kann**. Thank you, Mr. Chairman.

[Recess taken.]

Mr. **Anderson**. The subcommittee will be in order.

Our next witness is Mr. Thomas Ashwood, secretary of the Air Line Pilots Association, who is accompanied by John O'Brien.

We do have your full statement. It will be made a part of the record.

[Statement referred to follows:]

STATEMENT OF CAPT. THOMAS ASHWOOD, SECRETARY, AIR LINE PILOTS ASSOCIATION

Good morning, Mr. Chairman and members of the Subcommittee. I am Captain Thomas Ashwood, Secretary of the Air Line Pilots Association. With me today is John O'Brien, Manager of Engineering and Operations in ALPA's Engineering and Air Safety Department.

We are very pleased that the Subcommittee is holding these hearings on such a basic issue in aviation as the qualtiy of the Federal Aviation Administration's efforts to improve safety. On behalf of the 33,000 members of ALPA who fly for 31 airlines, we are grateful for the opportunity to participate in these hearings.

ALPA firmly believes these hearings could be the first step in the process to enact legislation to improve the role of the federal government in aviation safety. Such legislation is needed to bring about necessary reforms and improvements in aviation safety. The need for such reforms and improvements has been very well established over the years in reports by several committees of Congress and other independent and qualified bodies. Indeed, it is a true statement that every body taking an in-depth look at the Federal Aviation Administration has found serious deficiencies.

Let me offer some brief examples of problems in the FAA uncovered by previous studies:

In 1974, after finding that "the public is entitled to believe (the FAA) exists to ensure the highest safety standards in air transportation," the Senate Commerce Committee found that the agency was often taking regulatory action affecting manufacturers in secret. The Committee stated: "The regulatory process, particularly where public safety is concerned, should be totally above any suspicion that the Government is compromising safety standards to accommodate industry."

The following year, the Special Subcommittee on Investigation of the House Committee on Interstate and Foreign Commerce reported: "There have been instances when appropriate FAA actions in furtherance of air safety have been unreasonably delayed, or omitted entirely, because of an oversolicitous attitude on the part of some within the agency concerning the economic well-being of the aircraft industry or the air carriers."

Earlier this year, the General Accounting Office, at the request of this Committee, examined the FAA and found "a great deal of concern both inside and outside the industry about the FAA's effectiveness." GAO also reported that the agency has not been effective or timely in identifying safety hazards and has not used its resources to deal quickly and effectively with safety problems.

Just last May, the House Committee on Government Operations concluded an 18-month investigation of the FAA and found that the agency is not keeping up with the growth and complexity in aviation. The Committee reported that the FAA is delegating more and more of its regulatory responsibilities to the manufactureres and airlines and that its "personnel, procedures, resources and policies often do not reflect a truly regulatory agency."

Similar findings came only a month later from a special panel of the National Academy of Sciences. The panel found that the FAA needed competent, dynamic and stable leadership, and more outside advice. In rule-making to enhance safety, the Academy panel found that what the FAA lacked most was initiative.

The total impression of these reports is of an agency giving far less than its best to the public it is supposed to serve. What are the basic reasons for this long-standing and lamentable situation? While there may be more, we can identify two basic reasons for the inadequate record of the FAA on safety matters.

1. The basic conflict in the law between the duty of the FAA to promote and develop civil aviation and the duty to encourage flight safety and to reduce accidents.

2. The size of the FAA and its varied and complex missions mean that safety issues often fail to receive the prompt and full attention they deserve.

Section 103 of the Federal Aviation Act of 1958 tells the FAA Administrator to regulate "air commerce in such manner as to best promote its development and safety. . . ." Section 305 says the agency "is empowered and directed to encourage and foster the development of civil aeronautics and air commerce. . . ." On the other hand, Section 601 states the Administrator's duty shall be to "promote safety of flight of civil aircraft" and to "give full consideration to the duty resting upon air carriers to perform their services with the highest possible degree of safety in the public interest. . . ."

We have heard Administrator Bond and other top FAA officials state there is no conflict, that they do not let economic considerations or interests of manufacturers and airlines affect their safety decisions. Regretably, we cannot accept that statement because we know of too many instances where the FAA has compromised safety out of concern for the economic interests of those it regulates.

Let us provide two examples—one current, the other historical—out of the many, many instances we are aware of.

The Federal Aviation Act directs the FAA Administrator to prescribe and revise from time to time "reasonable rules and regulations governing, in the interest of safety, the maximum hours of periods of service of airmen, and other employees, of air carriers." These are known as flight time/duty time rules and have been on the books for more than 40 years. The FAA has made a multitude of interpretations of these rules, and the rules and their interpretations have long been a point of contention among the FAA, the airlines and the pilots.

Several years ago, the FAA announced it would no longer enforce the flight time/duty time unless. ALPA successfully sued the FAA and, under the terms of a court-approved agreement, the agency promised to enforce the rules.

Early last week, the FAA issued a Notice of Proposed Rule Making that would revise these rules. In the NPRM, the agency estimated these new rules would cost commerical aviation $107 million the first year they were in effect. Therefore, the FAA said, it will revise the rules unless those commenting on the NPRM demonstrate that the FAA's cost estimates are too high. The agency also admitted its cost estimates were based on incomplete data.

Thus, we have the situation where the law is quite clear that such rules are to be issued "in the interest of safety," and the FAA saying it will revise its proposed rules unless its cost estimates—admittedly based on inadequate data—are shown to be too high. That clearly demonstrates to us the existence of a conflict between safety and the economic effects on airlines.

One of many historical examples of the same conflict occurred in 1963 during the certification of the DC-9. At that time, a rule required that all aircraft with a gross weight of more than 80,000 pounds have three crewmembers in the cockpit. The Douglas Aircraft Co. asked for an exemption to this rule not on the grounds that the aircraft could be flown safely with only two in the cockpit but solely because the exemption was needed to compete with a British-made aircraft. The company said the exemption was needed to preserve a healthy aircraft manufacturing industry, retain jobs in that industry and contribute to the U.S. balance of payments.

What was the result? Not only did the FAA certificate the DC-9 with only two in the cockpit after the most cursory review of the cockpit design, it also abolished the 80,000-pound rule.

What can be done to end this conflict? We realize that in the real world it may never be possible to eliminate completely conflicts between economics and safety. However, we do not see the need for a statutory basis for such conflicts. Therefore, we highly recommend that any legislation you report contain a provision rewriting Section 103 and eliminating Section 305 of the Federal Aviation Act. That would be a long overdue first step toward reducing the conflicts between safety and economic considerations.

As I mentioned earlier, safety issues often fail to receive full and prompt attention from the highest levels of the FAA. It is our impression that this failure is not deliberate but is due largely to the demands on the time and attention of top FAA officials. Being realistic, it is obvious that safety matters—except immediately after a large accident—do not require immediate action.

Our national aviation system demonstrably operates with a high level of safety. Therefore, it is natural that top officials in a large and complex organization such as the FAA give most of their time and attention to more pressing matters. We should not overlook how large and complex the FAA is. It has more than 51,000 employees scattered throughout the U.S. and an annual budget of more than $2.2 billion. About 22,000 FAA employees are involved with the air traffic control (ATC) system, which is in operation 24 hours a day, seven days a week throughout the Nation.

It is our impression that the ATC system lately is placing great demands on the time of top FAA officials. Reports of computer outages throughout the system have attracted on-going attention from the Congress and the news media. Controllers at O'Hare International Airport, the world's busiest, and in the Common IFR Room in New York are publicly stating they are dissatisfied. The FAA and the controllers' union are already sparring intensively over a labor contract that does not expire until next spring.

The FAA also operates Washington National and Dulles International airports. And we do not need to tell ths Subcommittee what a controversial, time-consuming and emotional issue the FAA proposed policy on these airports is.

What should be done to ensure that safety issues receive the attention they deserve?

We believe a major improvement in the current situation would be to remove the safety responsibilities and functions from the FAA and place them in an independent agency. This new agency would handle such matters as aircraft certification, licensing of airmen, and the establishment and enforcement of rules affecting flying. What remains of the FAA would stay in the Deparment of Transportation and have reponsibility for operating the ATC system, managing the Airport and Airway Trust Fund, conducting research and development and similar functions. The bulk of the personnel and budget authority would remain in the DOT.

This reorganization would, we believe, enhance aviation safety by assuring that issues affecting safety would receive full and prompt consideration.

Our suggestion is in line with H.R. 7850, which was introduced three weeks ago by Congressman Matsui and is one of the bills before the Subcommittee today. ALPA endorses the thrust of H.R. 7850, and we believe it provides a good starting point for needed legislation to enhance aviation safety.

In considering this bill and others before you, the Subcommittee may wish to address a number of other issues. Among these are ending the present statutory duty to promote civil aviation, which I discussed earlier.

You may also wish to consider whether the Administrator and Deputy Administrator of the new safety agency should have fixed terms of office, as do members of other agencies such as the National Transportation Safety Board, Civil Aeronautics Board, etc. By having fixed terms of office, these two posts would become less political because they would not be subject to the effects of change in Administrations.

There is an appropriate precedent for such an action. After becoming concerned about several instances of improper political influence at the NTSB, the Congress enacted a law in 1974 that made the Board completely independent of DOT.

The Subcommittee may also wish to specify in greater detail than is done in H.R. 7850 what the qualifications of the Administrator and Deputy Administrator of the new safety agency should be. Having fixed terms of office and specific qualifications would do much, we believe, to provide the dynamic, competent and stable leadership called for by the National Academy of Sciences panel.

In conclusion, Mr. Chairman, we are pleased with the timely response of the Subcommittee in holding hearings on the vital and complex subject of aviation safety. There is too little time left in the 96th Congress to enact the needed legislation, but we believe an important first step has been taken with these hearings.

Therefore, we urge the Subcommittee not to let this important subject drop but to push on in the new Congress starting in January. All of us in ALPA are ready to offer our resources and work with the Subcommittee members and staff in drafting reasonable and prudent legislation that will bring about needed reforms in aviation.

That concludes our statement, Mr. Chairman, and we are prepared to answer any questions you may have.

Mr. ANDERSON. Please proceed.

TESTIMONY OF THOMAS ASHWOOD, SECRETARY, AIR LINE PILOTS ASSOCIATION, ACCOMPANIED BY JOHN O'BRIEN, MANAGER OF ENGINEERING AND OPERATIONS, ENGINEERING AND AIR SAFETY DEPARTMENT

Mr. ASHWOOD. Mr. Chairman, first of all, we are very pleased that this subcommittee is holding these hearings on such a basic issue in aviation as the quality of the FAA's efforts to improve safety.

We firmly believe the action being contemplated by the three bills that this committee is looking at is absolutely essential to improve the role of the Federal Government in aviation safety because there are serious deficiencies in that area.

The need for such reforms and improvements has been very well established over recent years by several committees of Congress and other independent, qualified bodies. Indeed, it is a true statement that everybody taking an indepth look at the FAA has found serious deficiencies.

I would suggest, sir, that, as an active airline pilot, on occasion I have an FAA inspector on board who examines my performance and my skills. If I performed my flights in the same manner as the FAA has performed its duties, I would have lost my license at the next stopover.

If I may, I would like to offer some brief examples of some of the more obvious problems within the FAA that were uncovered by previous studies.

As far back as 1974 the Senate Commerce Committee found that the agency was often taking regulatory action affecting manufacturers in secret. We suggest that this is not really the way a regulatory body should conduct its business.

The following year, 1975, the Special Subcommittee on Investigations of the House Committee on Interstate and Foreign Commerce reported:

> There have been instances when appropriate FAA actions in furtherance of air safety have been unreasonably delayed, or omitted entirely, because of an oversolicitous attitude on the part of some within the agency concerning the economic well-being of the aircraft industry or the air carriers.

My association is on record many times, sir, of drawing attention to what we consider to be an incestuous relationship between the aircraft manufacturers, the airline managements, and the FAA, which is supposed to regulate them.

Earlier this year, 1980, the GAO examined the FAA and found a great deal of concern both inside and outside the industry about the FAA's effectiveness.

Just last May, the House Committee on Government Operations concluded an 18-month investigation of the FAA and found that the agency is not keeping up with the growth and complexity in aviation.

A month later, the National Academy of Sciences came out with a report on the FAA that stated the FAA did need competent, dynamic, and stable leadership. Presumably, that was implying that it does not exist right now.

The total impression of all these reports and many others which are not mentioned here is that we have an agency that is giving less than best to the public it is supposed to serve. The basic reasons for this long-standing and lamentable situation are many and varied. But we will try, if we may, to indicate what our reasoning is on this.

There is a basic conflict in the law that established the FAA between the duty to promote and develop civil aviation and the duty to encourage flight safety and to reduce accidents. We feel that these twin duties the FAA has are the single most important factor in the deficiencies that have been brought to light by these various investigative bodies.

Also the size of the FAA and its varied and complex missions mean that safety issues often fail to receive the prompt and full attention they deserve.

If I can suggest an analogy, sir, it is like flying an airplane. My whole attention has to be devoted to the fact of flying an airplane

best copy available

and getting my passengers to their destinations safely. During the flight, I cannot concern myself with the financial stability of the air carrier I happen to be working for. I believe this is a basic problem within the FAA.

Section 103 of the Federal Aviation Act of 1958 tells the FAA Administrator to regulate "air commerce in such manner as to best promote its development and safety." We suggest that to develop air commerce is not really a function of the Federal Aviation Administration.

Just off the top of my head, I cannot think of another industry which is so encumbered by its regulatory agency. The auto industry, for instance, depends for its promotion on the Commerce Department. I would respectfully suggest that the aviation industry is really no different in that regard.

It goes on to state in section 601 of the Federal Aviation Act: "promote safety of flight of civil aircraft," a laudable objective; and, further: "give full consideration to the duty resting upon air carriers to perform their services with"—and I emphasize the following words—"the highest possible degree of safety in the public interest," again a very laudable objective. Unfortunately, actual instances, particularly in the last 18 months, have indicated that that objective is not being met.

We have heard Administrator Bond and other top FAA officials state there is no conflict, that they do not let economic considerations or the interests of manufacturers and airlines affect the safety decisions. This, sir, we believe is nonsense. We cannot accept that statement because we know of too many instances where the FAA has indeed compromised safety out of some inborn concern for the welfare and economic interests of those it is supposed to regulate. There are two prime examples of this situation where the economic welfare interests have superseded those of safety.

The Federal Aviation Act directs the FAA Administrator to prescribe and revise from time to time "reasonable rules and regulations governing, in the interest of safety, the maximum hours or periods of service of airmen, and other employees, of air carriers."

These rules have been on the books for 40 years. For literally years and years and years, we have been attempting to get some changes in this area. Only last week, the FAA issued a Notice of Proposed Rule Making which would revise these rules after literally decades of inaction. In that NPRM, the agency estimated these new rules would cost commercial aviation $107 million the first year they were in effect. Therefore, the FAA said, it will revise the rules unless those commenting on the NPRM demonstrate that the FAA's cost estimates are too high.

They are concerning themselves very greatly with the cost of what is a basic safety issue and the cost which, of course, would be borne by the airlines. I am not suggesting that they should not take it in as a factor, but I would suggest that it should not be a primary factor in their consideration of safety issues.

One of the other examples we would give is the same conflict which occurred in 1963 during the certification of the original DC-9. At that time, a rule required that all aircraft with a gross weight of more than 80,000 pounds have three crewmembers in the cockpit. That was a fact. The Douglas Aircraft Co. asked for an exemption to this rule not on the grounds that the aircraft could be flown safely with two pilots but solely because the exemption was needed to compete with other aircraft manufacturers. Needless to say, as we well know, the FAA granted the exemption; and sometime down the road the 80,000-pound rule disappeared out of the regulations.

Rather than debate the crew complement issue here, which I am sure you and the members of your committee are very familiar with, we would, if we may, submit a separate report and then proceed on to the next part.

What can be done to end this conflict that we perceive within the administration? We also have to work in the real world. It is never possible to eliminate completely conflicts between economics and safety. We recognize that. We are professionals, too. However, we do not see any need for a statutory basis for such conflicts. Therefore, we highly recommend that any legislation you report contain a revision rewriting section 103 and eliminating section 305 of the Federal Aviation Act. These are the areas we consider to be in conflict.

As I mentioned earlier, safety issues frequently fail to receive the full and prompt attention from the highest levels of the FAA. We are not suggesting that this inattention is deliberate in any way but is due largely to the demands on the time and attention of top FAA officials. I refer again to the analogy I drew between flying my aircraft and concerning myself over my airline's economic status.

Being realistic, it is obvious that safety matters, except immediately after a major accident—again, a knee-jerk reaction—do not require immediate action; not all safety matters do.

We agree that our national aviation system is an admirable system. It is a good system. But, like peace, you cannot have too much of safety.

We should not overlook how large the FAA is, roughly 55,000 employees scattered throughout the U.S. and an annual budget of $2.2 billion.

It is our impression that the ATC system, which is a function of the FAA, lately is placing great demands on the time of top FAA officials. There has been a major story running throughout the news media for the past several weeks. Reports of computer outages throughout the system have attracted ongoing attention from the Congress and the news media.

What we are facing now is a series of fairly major brush fires occurring throughout the areas of responsibility of the FAA. They are attempting as best they can within the formalized structure that already exists to cope with those brush fires, but they have not got enough time, personnel, or attention to give to each and every one of them. Consequently, they are going to have to ignore some. Those that they ignore will continue to burn and get larger and larger.

The FAA operates Washington National and Dulles International Airports. They are in the business of highways, the road that leads to Dulles International Airport. We do not believe that they have any business being in that; that is not an air safety matter.

We believe a major improvement in the current situation would be to remove the safety responsibilities and functions from the FAA and place them in an independent agency. This new agency would handle such matters as aircraft certification, licensing of airmen, and the establishment and enforcement of rules affecting flying.

What would remain of the FAA following such surgery would stay in the Department of Transportation and have the responsibility for operating the ATC system, managing the Airport and Airway Trust Fund, and conducting R. & D. and similar functions. The bulk of the personnel and budget authority would remain in the DOT.

In short, sir, we would like to see a separate, independent agency responsible for air safety and its regulation and certification.

Our suggestion is in line with H.R. 7850 and portions of the other two bills this committee is considering. ALPA endorses the thrust of H.R. 7850, and we believe it provides a very good starting point—and I emphasize starting point—for much-needed legislation to enhance aviation safety.

In considering the bill before you, Mr. Chairman and members of the committee, the subcommittee may wish to address a number of other issues. Among these are ending the present statutory duty to promote civil aviation, which I discussed earlier.

Another point we would like to raise, sir, is this. We think it is essential for an impartial operation of such an agency as we envisage that the administrator and the deputy administrator of the new safety agency, if ever it comes about, should have fixed terms of office as do the members of the NTSB, the Civil Aeronautics Board, and so forth. By having fixed terms of office, these two posts would become less political because they would not be subject to the effects of a change in administrations.

We have heard a lot of testimony earlier about the difficulty of changes of administrations and the problems they create, particularly in view of Administrator Bond's reluctance to record his actions.

The subcommittee may also wish to specify in greater detail than is done in H.R. 7850 what the qualifications of the administrator and deputy administrator of the new agency would be. Having fixed terms of office and specific qualifications would, we believe, do much to provide the dynamic, competent and stable leadership called for by the National Academy of Sciences panel.

Coming to a conclusion, Mr. Chairman, we are very pleased with the timely response of the subcommittee in holding these hearings. We are very grateful that you did in fact hold them. There is too little time, we recognize, left in the 96th Congress to enact the needed legislation, but we believe this committee has already established the first important step in holding these hearings so that some legislation may continue next year in the 97th Congress.

I would like to stress to you, Mr. Chairman, that the 33,000 pilots and the millions of passengers in the United States—I represent the pilots—are the users of the end product that comes out of the FAA. As an active airline pilot, myself and my colleagues have to live daily, every day, with what evolves out of the present FAA system. And we are unhappy with it, very unhappy with it.

We are in general agreement with all the other reports that indicate they are unhappy with the FAA. Therefore, we urge the subcommittee not to let this important subject drop but to push on in the new Congress starting in January. We in ALPA are ready to offer our resources and work with the subcommittee members and staff in drafting reasonable and prudent legislation that will bring about needed reforms in aviation.

We do have some expertise in aviation, though the FAA may sometimes question this. We want to have the opportunity to prove that we are right, but we do not wish to prove it by a body count of dead passengers.

I was attending some hearings earlier this year on another subject where FAA Administrator Langhorne Bond stated, "If it's not broke, don't fix it." There is overwhelming evidence that it is indeed broke. We hope that the Congress will fix it for us.

Mr. Anderson. Thank you, Mr. Ashwood and Mr. O'Brien. I take it, then, that you are supporting basically the Matsui bill, H.R. 7850?

Mr. Ashwood. That is correct, sir.

Mr. Anderson. Now, I notice the airline pilots have been very concerned about the facilities and equipment program and the need for more F and E to promote safety. Under the Matsui proposal, the F and E, along with the rest of ADAP, would be under the operations administration and not the safety administration.

Are F and E decisions critical to safety? Shouldn't F and E remain with the new safety administration?

Mr. Ashwood. That is a little bit of fine tuning, sir. We do not suggest in our support of the Matsui bill that if these two separate agencies exist, that they do not cooperate and coordinate with each other.

As far as the ADAP funding is concerned, obviously, the new safety agency, if I can call it that, would indeed have to apply for its budgetary considerations from the ADAP funds. That is not an unusual situation. We have many agencies, administrations, departments within Government that are obliged to apply certain funds from outside sources. So we do not really see a basic conflict there.

There is some cross-pollination that will have to go on, providing that the Matsui bill, for instance, would be successful, that they just do not stop talking to each other.

Mr. Anderson. Do you think that some recent airworthiness certification decisions would have been different if the Administration did not have to worry about problems in the operational area?

In other words, do you believe that safety mistakes have been made because the Administrator has been too concerned with nonsafety issues?

Mr. Ashwood. The short answer would be yes, sir, but I would like to defer to John O'Brien on my right, who is the safety and engineering expert.

Mr. Anderson. Mr. O'Brien?

Mr. O'Brien. Mr. Chairman, we believe—and I believe we testified before this same committee concerning deficiencies in the certification program, which was addressed by the National Academy of Sciences Blue Ribbon Panel. We also are aware of several instances outside of aircraft certification, say, in the changes in operational procedures involving airport capacity, which sometimes are made strictly under economic consideration, rather than in the best interest of safety, and we talked specifically in that case of operations involving intersecting runways, reduction in spacing between aircraft, and increased runway capacity. Those kinds of things, we do not feel always achieve or are equally balanced between safety concerns and increased capacity, thereby economic concerns.

Mr. **Anderson**. Do you think that cost considerations should play any part in safety rulemaking, and if so, what weight should be given to cost in deciding whether to impose safety requirements?

Mr. **Ashwood**. We are realistic men, Mr. Chairman, and we understand that the world has to function and our industry has to function in some sort of profitable basis, because we fortunately are not a Government entity; we are an independent, free society.

However, we believe that there is too much emphasis on the economic aspects of safety. Obviously, if you are prepared to spend the gross national product, I am sure we could operate an absolutely safe environment; that is one end of the scale. There have to be some economic considerations, but not the degree now. On a scale of 10, I really could not say, sir. Off the top of my head, I would give it a half.

Mr. **Anderson**. A half?

Mr. **Ashwood**. Half a point for consideration for safety matters that economics should have; just half a point out of 10.

Mr. **Anderson**. Are you satisfied with the opportunities that you have been given to participate in the decision on the certification of the DC9-80——

Mr. **Ashwood**. Absolutely not.

Mr. **Anderson**. I am asking about your opportunity to participate, rather than your views on the merits. If you have not been satisfied, what additional participation should be allowed in subsequent certification cases?

Mr. **Ashwood**. We are not satisfied with our opportunities, sir, but I will let Mr. O'Brien answer the specific details of why.

Mr. **O'Brien**. There are at least a dozen deficiencies, in our opinion, in the manner in which tests were conducted, results of tests were analyzed, and decisions were made in the certification or the pending certification of this airplane.

We are on record to the FAA detailing those deficiencies. In several of these instances, we asked to participate in the tests, we asked to observe the tests, and we asked for permission to analyze the data that come out of these tests.

Mr. **Anderson**. You were not given any opportunity to participate?

Mr. **O'Brien**. We are not given any opportunity to participate in any of these tests, we are not given any opportunity to observe any of the tests. We are going through a Freedom of Information Act request now to gain data from these tests.

Mr. **Ashwood**. If I can make another analogy, Mr. Chairman, which I am prone to do, if I were given the responsibility of reorganizing this Congress here, I am quite sure that you and your fellow Members of Congress would like to have a hand in that reorganization. That is what we are facing right now. We have to live with whatever they produce, and we cannot yet have a voice in its production.

Mr. **Anderson**. My third question was what additional participation should be allowed in subsequent certification cases?

Mr. O'**Brien**. Well, we have provided to FAA a plan or a suggested method for our participation in the existing certification process, and if this process were not to change, we would like to be able to participate in the status of an observer on several of the subgroups that participate within the Type Certification Board. And the particular groups we would be interested in are the groups that make decisions based upon operational experience.

We feel that we have something to lend to these groups—hard, fast, operational experience—that should be part of the certification process, that should be part of some of the design decisions that are made on how a particular system operates. We want to put that into the certification process.

Mr. Fary?

Mr. **Fary**. I have no questions, Mr. Chairman.

Mr. **Anderson**. Thank you very much, Mr. Ashwood and Mr. O'Brien, for a fine presentation.

Our next witness is Mr. Mark Schneider, executive vice president, Professional Airways Systems Specialists.

Mr. Schneider, we do have your full statement here, and it will be made a matter of the record. We would appreciate it if you could extemporize a little bit.

[Statement referred to follows:]

STATEMENT OF MARK E. SCHNEIDER
EXECUTIVE VICE PRESIDENT, PROFESSIONAL AIRWAYS SYSTEMS SPECIALISTS
BEFORE THE
PUBLIC WORKS HOUSE COMMITTEE
SUBCOMMITTEE ON AVIATION
AUGUST 21, 1980

Mr. Chairman and Members of the Subcommittee:

The Professional Airways Systems Specialists greatly appreciates this opportunity to testify before you presenting our views and recommendations regarding some of the most positive proposed legisla- recommendations regarding some of the most positive proposed legisla-

The Professional Airways Systems Specialists greatly appreciates
this opportunity to testify before you presenting our views and
recommendations regarding some of the most positive proposed legisla-
tion we have seen concerning the Federal Aviation Administration.
We feel the recommendations of the National Research Counsel Report,
H.R. 351, and H.R. 6771, have the potential for bringing about much
needed change and redirection of priority within the FAA. It is our
belief that for the National Air Space System to continue to main-
tain its current safety level, these changes are mandatory.

PASS does not share the optimism of the FAA for the continuation of the present National Air Space System's safety record. We are fully aware, and take great pride in the fact that this record has been achieved because of the professionalism exhibited by individuals in the field. We are abhorred that we cannot say this record was achieved because of the Federal Aviation Administration in its entirety. If the dedication of "safety first" was present at all levels, this legislation and many of the hearings you have held over the past year would not have been necessary.

You have before you numerous reports, recommendations and legislation that, if enacted, we feel will bring the FAA back in line with our organization's objective, the continuation of this country's aviation system as the safest and best in the world and, at the same time, reducing aviation related deaths. Without change, we feel that the present safety record will be of little comfort to the families of the next aviation disaster. If we do not do everything possible to improve this record, we will all share the guilt for aviation's next tragedy. The next misfortune may be technically labeled pilot error, improper maintenance of aircraft, controller error or system failure, but we will wonder if we had done more, could it have been avoided. This statement is echoed in the report by the Comptroller General of the United States, How To Improve the Federal Aviation Administration's Ability to Deal With Safety Hazards. Page i states, "Aviation, compared with other transportation modes, has a good safety record. However the Federal Aviation Administration (FAA) has not been timely or effective in dealing with some safety hazards (safety problem areas such as midair collisions...)."

We have testified before this subcommittee in the past on a change in the FAA's maintenance philosophy from corrective to preventive. We have testified in the past on reductions based upon theoretical ideas and projections versus the real life facts. These allegations of poor planning are before you once more. The author this time is not PASS, it is the Government Accounting Office. Page 18 of the report states, "Moreover, top management's lack of emphasis on the importance of planning has contributed, among other things, to untimely or ineffective approaches for solving or reducing some safety hazards...An effective planning process should be FAA's basic tool for guiding the expenditure of its resources in conformance with its safety goals and priorities...Moreover, top management's failure to emphasize the importance of planning appeared to be the major reason why an effective process did not exist as of September 30, 1979." PASS believes that now, almost one year later, this is still true.

We disagree with the GAO report on their viewpoint of an evaluation system for the FAA. We do not feel it would be "especially valuable". We feel it is mandatory for an agency like the FAA. Pages 62 and 63 sum up our feelings about the evaluations of our profession. "While FAA has devoted considerable effort to compliance reviews and technical studies of equipment/facility inspection activities, the evaluation system is producing little evidence on how well programs are meeting the objectives contained in authorizing legislation."

We vigorously disagree with the Department of Transportation's position statement on the G.A.O. report that the changes brought within the FAA in August of 1978 did not provide enough experience for their observations to have applicability (Appendix III, page 74).

These changes brought about by the Administrator would, at a glance, appear to have added more bureaucracy to the FAA. A comparison of the organizational structure of the FAA in 1977 versus 1979 (pages 70 and 71) shows an increase of three offices or services from 44 to 47. This may sound small unless one considers two of these three are at the associate administrator level. In 1977, there were 10 offices directly under the administrator. In 1979, six of these 10 must now go through an associate administrator. It is our belief this adds one more layer of insulation between the administrator and the real aviation system.

Overall, we agree with the report and commend the GAO for its candidness. PASS feels that H.R. 6771, introduced by Congressman Levitas, is most appropriate and necessary. Unfortunately, we do not feel it is sufficient in itself to maintain an adequate safety margin in the future.

This bill alone will do little more than have a cosmetic effect. There are no specific FAA functions designated in the bill that the Department of Transportation will assume. It is feasible, without proper guidelines, that this bill would only redesignate such functions as the two Washington area airports (National and Dulles), the Paris Air Show display and the loan guarantees program from the FAA to the DOT. Finally, while this bill realigns the FAA to deal primarily with aviation safety, it does not establish safety as the primary mission of the agency! We feel this must be spelled out.

H.R. 351 would primarily establish an independent Federal Aviation Agency. To some this may seem as a regressive step to the early 1960's. As a participant in the results of the Department of Transportation Act of 1966, we view H.R. 351 as an overdue remedy. An opinion of the FAA can be found in Reason magazine's January 1979 issue. "The FAA is a classic bureaucracy, stumbling from crisis to crisis, pressured by lobbyists, harrassed by politicians, seeking protection in the bowels of the civil service system." The only area we would disagree with is the harrassment by politicians. If Congress did not question FAA activities, there would be total ineptitude in the administration of the FAA. We perceive this bill as a progressive step for aviation, the Department of Transportation and the Federal Aviation Administration.

The FAA currently comprises about 50 to 55% of the Department of Transportation. An activity as large as the FAA mandates a lot of attention and coordination within the Department of Transportation. The other organizations comprising the Department must therefore suffer, especially in this period of cut-backs and fiscal restraint. The other areas of DOT are all related to surface transportation.

The illigitimate DOT child appears to be the FAA, for we are the only segment not surface bound. To quote the National Research Council, "FAA regulates a single, relatively cohesive industry, where the similarities of training and perspective of industry and agency people far outweigh their differences..." The FHA, FRA, Coast Guard, etc. should function much smoother without the DOT having to shepherd the FAA.

The independence of the agency should also assist the relationship with Congress. We would be extricating one entire level of bureaucracy. The FAA would be able to establish priorities on needed aviation problems, equipment, manpower and changes directly to the Congress. They would no longer have to be concerned with how big a share of the DOT's budgetary pie they would be allowed.

In hearings before this subcommittee in December, the Administrator was likened to a coach of a team. As a coach, he would be answerable to the general manager. Too many times the difference between a winning season and a losing season has been disputes between the coach and the front office. How many times in the past ten years has there been open confrontation between the Secretary of Transportation and the FAA Administrator. We want the FAA's season to not only be winning, but a championship season. The line players on the team have the caliber and ability, all we need is the direction and support.

This bill (H.R. 351) in itself would be a marked improvement to the present system. Albeit, like H.R. 6771, this bill is not sufficient to preserve the current level of safety or adequate for the safety level necessary in the future. If the authors of these bills, or this subcommittee, would combine these bills, we would definitely be taking great strides to meet the requisites of the aviation future. We would have an independent agency, whose prime concern was the safety of aviation, responsible for the National Air Space System and its users.

Would this change be enough? Possibly. Since we are dealing with human lives, we feel insurance is mandatory. This insurance would be provided through the depoliticizing of the agency. The castration of politics from the FAA is not a new idea. Like H.R. 351 and H.R. 6771, it is long overdue. Reason magazine cited a number of reports that suggested the agency not only be depoliticized, but removed from government altogether. Cited are air traffic control systems in Switzerland (Radio-Schweiz), Mexico (RAMSA), Britain (International Aeradio, Ltd.), and Persian Gulf area (I.A.R. Caribbean, Ltd.) as examples of independent ATC systems.

Recommendations in 1975 from the Special Air Safety Advisory Groups and Glen Gilbert, an aviation consultant and the first controller of the Bureau of Air Commerce in 1936, reached this same conclusion. The independent ATC system idea surfaced again in a study called Aviation Futures to the Year 2000. This report was done by the Futures Group in Connecticut. Their work was commissioned by the FAA and is an official agency document.

The rationale stated in Reason was, "To involve government in any way is to seriously risk defeating the basic purpose of the change -- which is to transfer ATC from a politically controlled bureaucracy to an efficient business." At this time, we feel that taking politics out of the Agency and removing one layer of the bureaucracy is more feasible than a totally independent ATC system. If this is not accomplished, we may find ourselves so mired down with inefficiency, an independent system will be the only alternative.

The depoliticizing could be accomplished to a great degree through a change to H.R. 351. If the administrator was appointed for a six-year term, staggered from the associate administrator who would also be appointed for a six-year term, political gamesmenship would be greatly reduced. If the recommendation for these offices was done by a panel of outside experts, as alluded to in the NRC report on page 75, it would remove politics even more and put the emphasis on aviation background and competence (see Attachment A). The NRC report cites five heads of agency in the last ten years. Between 1961 and 1970, there were four FAA administrators. Nine heads in 20 years, each time reorganizing priorities, making changes and generating confusion. Each administrator, or head of agency, has avoided accountability for problems confronting aviation by blaming prior administrations. It is time the roulette game of administrators stopped. Had there been cohesiveness in the past, the criticism in the NRC report on page 73, "Certain changes in the structure of the agency at the highest level also needed to be made--changes involving improvements in the quality of policy and technical advice available to the Secretary of Transportation and the Administrator of the FAA, and the provision of greater continuity in the leadership of the FAA", would not have been levied. The need for competent people and longevity is again mentioned on page 14, "The rapid turnover of senior FAA officials in recent years has resulted in several new approaches to longstanding problems with each change in administration. Particularly in organizations concerned with safety regulation and high technology, of which the FAA is both, there is a decided value of continuity for programs and policies to be tested for effectiveness. Beyond continuity, the administrator and deputy administrator need to posess high technical, professional, and administrative competence."

If politics are allowed to continue, we can only expect more disasters and floundering in attempts to solve problems. The FAA will always follow priorities as established by the head of the agency. If the priorities are set to make the team look good instead of addressing issues and finding workable solutions, we will continue to have a window dressing operation. If safety is not the first priority, we will unnecessarily lose more lives in aviation accidents and tragedies. If competent leadership instead of political patronage is not practiced, our role of leadership in world aviation will be lost.

Over this last year PASS has been before this subcommittee a number of times. We have attempted to provide you with insight into aviation problems that you were not cognizant of. We gave you a glimpse of a profession that has a direct impact on all users of the ATC system whether they are pilot, controller or passenger. We have not been able, before now, to recommend many solutions to these problems. The recommendations we are now giving are:

1. Establish a separate agency (in support of H.R. 351).

2. Establish the mission of that agency to be safety (in support of H.R. 6771 and the concurrence with the Government Accounting Office report of Improving the FAA).

3. Establish a panel to recommend candidates of technical competence (and background) for the office of administrator and deputy administrator (in concurrence with the National Research Council report).

4. Depoliticise the aforementioned offices for continuity and effective planning and implementation of improvements to the aviation system of the future (in concurrence with PASS Attachment A).

We realise these recommendations will not solve all the problems of our profession or the aviation system. However, they will go a long way in correcting problems within the FAA.

We would like to commend the sponsors of H.R. 351 and H.R. 6771 for their efforts to improve the structure of the FAA. We concur with the reports of both the Government Accounting Office and the National Research Council and appreciate their hard work and frankness. Finally, we thank this subcommittee and its staffers for allowing us to present our recommendations and viewpoints.

ATTACHMENT A

PASS suggests the following change to H.R. 351 to improve the efficiency of the Federal Aviation Agency:

Replace Section 3(b) in its entirety with:

(b) The Agency shall be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in an aviation related field. This appointment shall be for a six year term.

Replace Section 3(c) in its entirety with:

(c) There shall be a Deputy Administrator of the Agency who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in an aviation related field. This appointment shall be for a six year term and be staggered from the term of the Administrator by at least one year.

Reletter Section 3(d) to 3(e) and insert a new Section 3(d) to read:

(d) Candidates for the office of Administrator and Deputy Administrator shall be recommended to the President by a panel of nine experts from government, the aviation industry, public affairs and research management. This panel should represent as a group a balance of interests and be selected solely on the basis of distinguished contributions to their fields of activity. Qualifications for candidates for the office of Administrator shall be guided by Section 301(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1341(b)). Qualifications for the office of Deputy Administrator shall be guided by Section 302(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1342(b)).

Mr. ANDERSON. Please proceed.

TESTIMONY OF MARK E. SCHNEIDER, EXECUTIVE VICE PRESIDENT, PROFESSIONAL AIRWAYS SYSTEMS SPECIALISTS

Mr. SCHNEIDER. Thank you, Mr. Chairman.

Professional Airways Systems Specialists appreciates this opportunity to testify before you, presenting our views and recommendations regarding some of the most positive proposed legislation we have seen concerning the FAA.

We feel that H.R. 351 and H.R. 6771 together have the potential for bringing about much-needed change and redirection of priorities within the FAA.

The GAO study, combined with the National Research Council report, indicates that these changes are justified and, more importantly, needed. It is our belief that for the national air space system to continue to maintain its current safety level, these changes are mandatory.

PASS does not share the optimism of the FAA for the continuation of the present national air space system's safety record. We are fully aware, and take great pride in the fact, that this record has been achieved because of the professionalism exhibited by the individuals in the field. We are abhorred that we cannot say this record was achieved in its entirety because of the Federal Aviation Administration at every level.

You have before you legislation substantiated by reports and recommendations. We feel this legislation, if enacted with our proposed changes, will bring the FAA back in line with our organization's and the subcommittee's objective: The continuation of this country's aviation system as the safest and best in the world, and at the same time, reducing aviation-related deaths.

If we do not do everything possible to improve this record, we will all share the guilt for aviation's next tragedy. Good safety records are of little comfort to the families of the statistics.

The next misfortune may be technically labeled "pilot error," "improper aircraft maintenance," "controller error," or "system failure," but we will wonder, if we had done more, could it have been avoided. This statement is echoed in the report of the Comptroller General. Aviation, compared with other transportation modes, has a good safety record. However, the FAA has not been timely or effective in dealing with some safety hazards, safety problem areas such as midair collisions.

We have testified before this subcommittee in the past on computer failures, inadequate and inaccurate reporting systems, a change in the FAA's maintenance philosophy from preventive to corrective, and staffing reductions based on theoretical ideas and projections versus the real life facts.

Our previous testimony has been based upon the system as we, the employees, perceive it and documentation that our national office has secured. This testimony was challenged by the FAA as a union tactic. These allegations of poor planning and ineffectiveness are before you once more. The author this time is not PASS; it is the Government Accounting Office.

Page 18 of the report states, "Moreover, top management's lack of emphasis on the importance of planning has contributed, among other things, to untimely or ineffective approaches for solving or reducing some safety hazards. An effective planning process should be the FAA's basic tool for guiding the expenditure of its resources in conformance with its goals and priorities. Moreover, top management's failure to emphasize the importance of planning appeared to be the major reason why an effective process did not exist as of September 30, 1979." PASS believes that now, almost 1 year later, this is still true.

PASS feels that H.R. 6771 is appropriate and necessary. Unfortunately, we do not trust that by itself, this bill is sufficient to maintain an adequate safety margin in the future. This bill alone without specific guidelines will do little more than have a cosmetic effect.

It is feasible that as written, H.R. 6771 would redesignate such functions as the Washington area airports, the loan guarantee program, and the Paris Air Show display from the FAA to the Department of Transportation.

Finally, while this bill realines the FAA to deal primarily with aviation safety, it does not establish safety as the primary mission of the agency. We feel this must be spelled out.

To some, H.R. 351 may seem a regressive step to the early 1960's. As a participant in the results of the Department of Transportation Act of 1966, we perceive H.R. 351 as an overdue remedy. The FAA comprises about 50 to 55 percent of the Department of Transportation. The other areas of DOT are all related to surface transportation. The illegitimate child appears to be the FAA, for we are the only segment not surface-bound. To quote the National Research Council, "FAA regulates a single, relatively cohesive industry, where the similarities of training and perspective of industry and agency people far outweigh their differences."

The independence of the agency should also assist the FAA's relationship with Congress. It would be extricating one entire level of bureaucracy. The FAA would be able to establish priorities on needed aviation programs, equipment, manpower, and changes directly to the Congress. They would no longer have to be concerned with how big a share of DOT's budgetary pie they would be allowed and then have to establish priorities accordingly.

In hearings before this subcommittee in December, the Administrator was likened to a coach of a team. Too many times, the difference between a winning season and a losing season has been disputes between the coach and the front office. How many times in the past 10 years has there been open confrontation between the Secretary of Transportation and the FAA Administrator? We want the FAA season not only to be winning, but a championship season. The line players on the team have the caliber and ability; all we need is the direction and support.

Unfortunately, H.R. 351, like H.R. 6771, is not in itself sufficient to preserve the current level of safety or ensure an adequate safety level in the future. If these bills were combined, we would be taking great strides to meet the requisites of the aviation future.

The final step that is necessary to achieve aviation needs is the depoliticizing of the FAA. The FAA is a classic bureaucracy, stumbling from crisis to crisis, pressured by lobbyists, harassed by politicians, seeking protection in the bowels of the Civil Service System.

This charge appeared in Reason magazine's January 1979 issue. The NRC study considers the leadership turnover problem—five Administrators in the last 10 years; four in the previous 10 years—to warrant special attention. The concluding remarks state, "The FAA needs highly competent, dynamic leadership, with terms of sufficient duration to provide stability and continuity."

At this time, we feel that taking politics out of the agency and removing one layer of bureaucracy is more feasible than the totally independent ATC system favored by others. Reason magazine cited a number of reports and examples that suggested the removal of the agency from the Government was needed. The Special Air Safety Advisory Group and Glen Gilbert, an aviation consultant and the first air traffic controller of the Bureau of Air Commerce in 1926, reached this same conclusion in 1975. The idea again surfaced in a study called "Aviation Futures to the Year 2000," commissioned by the FAA.

If the castration of politics from the agency is not accomplished, we may find ourselves so mired down with inefficiency that an independent system will be the only alternative.

The depoliticizing could be accomplished to a great degree through a change to H.R. 351. If the Administrator was appointed for a 6-year term, staggered from the Associate Administrator, who would also be appointed for a 6-year term, political gamesmanship would be greatly reduced.

If the recommendation for these offices was done by a panel of outside experts, as alluded to in the NRC report on page 75, it would remove politics even more and put the emphasis on aviation background and competence.

Nine heads of the FAA in 20 years, each time reorganizing priorities, making changes, and generating confusion, has created problems. Each Administrator, or head of agency, has avoided accountability for problems confronting aviation by blaming prior administrations.

It is time the roulette game of Administrators stopped. Had there been cohesiveness in the past, the following criticism of leadership at the highest level and lack of continuity of that leadership in the NRC report, at pages 14 and 73 both, would not have been levied.

Beyond continuity, the Administrator and Deputy Administrator need to possess high technical, professional, and administrative competence.

If politics are allowed to continue, we can only expect more disasters and floundering attempts to solve problems. The FAA will always follow priorities as established by the head of the agency. If the priorities are set to make the team look good instead of addressing issues and finding workable solutions, we will continue to have a window-dressing operation. If safety is not the first priority, we will unnecessarily lose more lives in aviation accidents and tragedies. If competent leadership instead of political patronage is not practiced, our role of leadership in world aviation will be lost.

For the reasons just stated, we recommend and respectfully request that this subcommittee: One, establish a separate agency; two, establish the irrevocable mission of that agency to be aviation safety; three, establish a panel to recommend candidates of technical competence and background for the offices of Administrator and Deputy Administrator; and four, depoliticize the aforementioned offices for continuity, effective planning, and implementation of improvements to the aviation system of the future.

We realize these recommendations will not solve all the problems of our profession or the aviation system. However, they will go a long way in correcting current problems and preparing for the future needs of the system.

We would like to commend the sponsors of H.R. 351 and H.R. 6771 for their efforts to improve the FAA structure. Overall, we concur with the reports of GAO and NRC and appreciate their hard work, and more importantly, their frankness.

Finally, we thank this subcommittee and its staff for allowing us to present our recommendations and viewpoints.

I would like to answer any questions you now have, Mr. Chairman.

Mr. ANDERSON. Thank you, Mr. Schneider.

You state that H.R. 6771, the Levitas bill, is most appropriate and necessary. Later, you say that the bill alone will do little more than have a cosmetic effect. Are you suggesting that H.R. 6771 be modified, and if so, what changes do you suggest?

Mr. SCHNEIDER. We are suggesting that Congressman Levitas' idea in H.R. 6771 is necessary and overdue—that is, to make safety the top priority of the FAA. What we are saying is as the bill is written, with all the discretion for the functions to be transferred between DOT and FAA left to the Secretary of Transportation, it is feasible H.R. 6771 will do no more than have a cosmetic effect that will look good on paper and be useless to us in the field.

Mr. ANDERSON. And you are suggesting what, then, in addition to H.R. 6771?

Mr. SCHNEIDER. H.R. 6771 by itself, sir, we could not support as a solution. In our testimony, we recommend a combination of safety as the first priority and the establishment of the independent agency. We feel this is the most workable solution.

Mr. ANDERSON. Will you comment on the belief held by many that it is important to have a Cabinet level representation for aviation and air safety? Mr. Bond said yesterday that without the Department of Transportation, the FAA would not only be independent, but isolated. He cited an example where it took the Administrator of an independent FAA 6 weeks to see the President.

Mr. SCHNEIDER. Sir, I think that would be a distinct problem between the President and the Administrator of the FAA. I do not find anybody that would be charged with the aviation industry of this country having a hard time seeing the President if he had a problem dealing with aviation. I do not think the President would like the press reviews of that comment.

As far as having a Cabinet level position for the FAA, we have a tendency to disagree with Mr. Bond greatly in that respect. The Cabinet level position of the DOT has not proven that much of a help to the FAA from the employees' viewpoint, and from the testimony we have heard today and read from yesterday, it appears that the users of the system are also not finding any great benefit to be derived from DOT.

We have found that we have run into budgetary constraints because DOT's budget did not allow the FAA enough money to go into programs, yes. So we find just the opposite.

Mr. **Anderson**. I am informed it was in 1966 that the FAA was made part of the Department of Transportation, and it was just prior to that that it took the Administrator 6 weeks to see the President.

Mr. **Schneider**. Mr. Anderson, I do not dispute that. I can imagine at times, it takes Mr. Bond a long time to see Secretary Goldschmidt. In the past, it has taken months for the FAA Administrator to see the Secretary because of open confrontation between the two. If you cannot get to your representative on the Cabinet, what good is a Cabinet level representative, is our question.

Mr. **Anderson**. You say that in the past 10 years, there have been open confrontations between the Secretary of the Department of Transportation and the FAA Administrator. Can you provide us examples of disagreement which you believe were undesirable?

Mr. **Schneider**. I would prefer to provide those for the record, as far as specifics. Prior to Dr. McLucas, there was definite confrontation between the Administrator and Secretary. It has gone on in the past. This has been referred to without specification in NRC. I did not join the agency until 1970, so my personal experience will not cover that area.

Mr. **Anderson**. Would you do that for the record, please?

Mr. **Schneider**. That I will, sir.

[The following was received for the record:]

PASS
Professional Airways Systems Specialists
Suite 820/444 N. Capitol Street
Washington, D.C. 20001/(202) 347-6065

President
Howard E. Johannsen

Executive Vice President
Mark E. Schneider

September 5, 1980

The Honorable Glenn M. Anderson
United States House of Representatives
2410 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Anderson:

PASS was requested to provide periods of open confrontation between the Administrator of the Federal Aviation Administration and the Secretary of Transportation for the record during the hearings held before the Aviation Subcommittee on August 21, 1980.

While John Volpe was Secretary of Transportation (January 22, 1969 to February 2, 1973) and John Shaffer was Administrator of the FAA (March 24, 1969 to March 14, 1973), their relationship was categorized as stormy, at best. This has been confirmed by consultation with two other labor organizations, namely PATCO and ALPA, that had numerous dealings with the FAA during this period.

During the term of office of Alexander Butterfield as Administrator (March 14, 1973 to March 31, 1975) the infamous Watergate incident took place. Because of the part Administrator Butterfield played in this incident during this period, his effectiveness was greatly diminished.

While there have not been any public and/or rumored confrontations between succeeding Secretarys of Transportation and FAA Administrators, PASS believes that there can be in the future. This problem can exist whenever there is a personality conflict and/or professional differences between the people who hold these offices.

I am hopeful that the identification of the periods of time and individuals involved where confrontation between the Department of Transportation and the Federal Aviation Administration took place is sufficient. If I can be of further assistance, please do not hesitate to contact me.

I remain,

Sincerely,

Mark E. Schneider
Executive Vice President

Mr. **Anderson**. Do you have any comments on Congressman Matsui's bill to split the FAA into an operations administration in the Department of Transportation which, among other functions, would run the air traffic control system, and an independent safety administration, which would make rules on the certification and licensing?

Mr. **Schneider**. Well, a split is necessary. I am not 100 percent sure that we can back where he placed his split. We would prefer that the independent agency be the operations branch. The safety aspects, in reference to Mr. Bond's comment about the clout of the Cabinet, maybe they should have the safety aspects. I also understand from testimony earlier today, Congressman Matsui is not opposed to that. I think that quite possibly, his bill, with revision does have merit, a lot of merit. I do not know if I can agree with the licensing portion from the pilots. ALPA has addressed that one. They are better qualified to address that. From the operations under the air traffic control system, we would have no problem necessarily being in an operations branch.

With your comment earlier about F and E safety does not carry that big a priority with F and E right now, sir, so it really would not make a lot of difference.

Mr. **Anderson**. You have previously testified before this committee that FAA management has been involved in a conspiracy to hide the unrealiability of the ATC system. Has the Justice Department taken up these charges, and do you know the status of this or any other investigation?

Mr. **Schneider**. From our understanding, sir, not only the Justice Department but the Inspector General of the Department of Transportation are checking into these allegations. We have no idea what the status of their investigation is. We will work with both Departments to the utmost availability of our resources to help them in these investigations.

Mr. Bond, at that same time, when we made those allegations, said those charges would not hold up to public scrutiny. Well, since that time, sir, they have stood up to Congressman Whitaker's investigations, Senator Percy's investigation, the GAO's investigation, and now the NRC investigation. I do not know what he is referring to by public scrutiny, but to me, that is public scrutiny. And every one of them has found fault with the planning process and have cited numerous instances of poor planning and mismanagement of the FAA.

So I think our charges will stand.

Mr. **Anderson**. Do you have any comment on the blue ribbon report on aircraft certification?

Mr. **Schneider**. We are not concerned with the blue ribbon report on aircraft certification, sir. That is not part of our profession, so we would not be qualified to make comment on it. We did, for the record in our testimony, make comment on leadership. In that, we are in agreement with the NRC blue ribbon panel. The leadership needs to be realigned in the FAA from the top down, because the top of the leadership is the one that determines where the FAA goes, not the people on the bottom.

Mr. **Anderson**. Mr. Fary?

Mr. **Fary**. No questions, Mr. Chairman.

Mr. Anderson. The minority has some questions for the record they would like to have you answer separately.

Mr. Schneider. I would be more than happy to answer the questions of the minority for the record.

Mr. Anderson. Thank you, Mr. Schneider. We appreciate it.

[The following was received for the record:]

Professional Airways Systems Specialists
Suite 820/444 N. Capitol Street
Washington, D.C. 20001/(202) 347-6055

President
Howard E. Johannsen
Executive Vice President
Mark E. Schneider

September 9, 1980

The Honorable Gene Snyder
United States House of Representatives
2330 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Snyder:

During the hearings before the Aviation Subcommittee on August 21, 1980 concerning FAA reorganization, the Professional Airways Systems Specialists was requested to respond to six questions from the minority members of the subcommittee for the record. This letter is to serve as our response to the questions.

1. In your estimation, what are the primary areas in which the FAA must improve its performance?

The first area in which the FAA must improve its performance is in a re-establishment or re-alignment of its priorities. We feel no one, including the FAA, knows the true status of the air space system. We have come to this conclusion based upon the confusion generated from numerous reporting systems where semantics is paramount to accuracy.

The definition of an outage in one reporting system is not necessarily the same for another reporting system. Yet, which reporting system used is not identified when statistics and charts derived from their information is presented to Congressional subcommittees or the public. We feel one reporting system, with standard definitions, would give us a more accurate picture of the National Air Space System. Once this picture is derived, appropriate action from the FAA and/or Congress could take place.

We also feel there is inadequate pre-planning for the future, based upon the FAA's policy of reaction to problems instead of forecasting needs. In our own profession this is best exemplified by reductions in training quotas due to budgetary restraint. If we do not have the trained personnel, we will not have the maintenance capability to keep the air space system working.

While these are just two areas, we feel that failure to act in these areas alone will make action in other areas nonconsequential.

2. Over the years the FAA has received criticism from those who believe that the agency's safety responsibilities are

in conflict with its statutory duty to promote civil aviation. Do you agree with this assessment?

We believe the FAA is more concerned with economics than safety. We feel economics play a major part in the FAA's fulfillment of its role to promote civil aviation. Too much emphasis is placed on the economic impact of safety enhancements versus the improvement these enhancements would have on the system.

Primary examples from our profession are when facilities that were formally covered 24 hours and 16 hours with trained specialists on site to respond to failures of equipment in emergencies are reduced to eight hour coverage. The FAA believes call-back overtime is more feasible economically than the ability to respond immediately to a failure of equipment or systems.

We also see this exemplified in areas where single specialists are on duty around high voltage equipment. This has long been recognized as an unsafe practice within the electronics industry, but the FAA encourages this practice through use of minimal staffing at remote sites and, at times, major facilities.

We must therefore agree from our professional viewpoint with the assessment that the FAA, at times, gives too much emphasis to the duty to promote aviation versus safety and conflicts to result.

3. Of the numerous recommendations issued by both the National Research Council panel and the GAO, are there any which you believe should be accorded priority in their implementation by the FAA? Are there any recommendations which you feel are not justified? Specify.

Priority in implementation should be given to increased planning, not only in the safety field, but also in the overall operations of the FAA. We further feel the recommendations for selection of the Administrator and Deputy Administrator, as outlined in the NRC report, would be a marked improvement over political patronage, as is now practiced. Since we do not have access to all of the materials that justified the reports of the GAO and the NRC, we are not qualified to state if any of their recommendations are not justified. In the review of these reports, we did not find any surprising recommendations.

4. In introducing H.R. 6771, Congressman Levitas criticized FAA for not challenging the industry more by adopting regulations which compelled the industry to improve the state of the art, rather than adopting regulations to fit the existing technology. Do you believe this criticism is valid?

We feel Congressman Levitas' criticism of the FAA is another way of saying there is not adequate pre-planning for future needs by the agency. It also implies economic impact considerations are given too much weight in the formulation of regulations. If this is Congressman Levitas' intent, then we are in agreement and we find the criticism valid.

5. Langhorne Bond criticizes the Matsui bill because he feels it would take us back to the days when responsibility for aviation safety was fragmented - a situation which Congress recognized in creating the FAA. Is there any doubt that this legislation could actually have the opposite result than that which is intended?

We agree with Mr. Bond that the Matsui bill, as proposed, could fragment aviation safety. In our testimony before the subcommittee on August 21, we pointed out that we favored the idea of the operations branch being made independent rather than the safety branch of the FAA.

I would like to point out at this time that PASS has not given total endorsement of the Matsui bill (H.R. 7850) because we favor the removal of the FAA in its entirety from the Department of Transportation. We would like to stress that if the FAA is removed from the DOT, or left a part of the DOT, its mission should only be the operation of the air space system and its first priority should be the improvement of safety for that system.

6. One of the criticisms of the Matsui bill is that it would hamper R & D efforts by splitting up the agency, thereby making it more difficult to coordinate various projects with the appropriate operating divisions of the FAA. Would you respond to this?

Due to the built-in bureaucracy structure of the Matsui bill, we do feel that R & D efforts could be hampered if this bill is passed. We feel coordination between the proposed Aviation Operations Administration and Air Safety Administration could, at times, cause serious delays in the resolution of problems. We are currently experiencing delays due to the required coordination of the FAA with other government agencies, such as the Environmental Protection Agency.

I appreciate this opportunity to respond to your questions. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Mark E. Schneider
Executive Vice President

Mr. **Anderson.** Our next witness is Mr. Cornish Hitchcock, associate director, Aviation Consumer Action Project.

Mr. Hitchcock, the full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

Statement of the Aviation Consumer Action Project, Presented by Cornish F. Hitchcock, Associate Director, Accompanied by Matthew H. Finucane, Staff Attorney

Mr. Chairman, members of the Subcommittee on Aviation: on behalf of the Aviation Consumer Action Project (ACAP), we appreciate the opportunity to testify today on proposed legislative changes in the structure, goals and operations of the Federal Aviation Administration.

ACAP was founded in 1971 to advocate improved air safety, expanded passenger rights, and affordable air fares. Over the past decade we have petitioned and prodded the FAA to take swift action on a number of safety problems such as commuter air safety, post-crash fires, and the crashworthiness of aircraft seats and seat restraints. In addition, we have been designated as a full party in several accident investigation hearings held by the National Transportation Safety Board (NTSB).

ACAP commends the Subcommittee for holding these hearings, and we believe that any legislative reform the Subcommittee considers or enacts should address the need to upgrade FAA regulatory and operational activities to afford better protection to the flying public. FAA Administrators come and go, yet there are problems which seem to continue for years without resolution. It is particularly appropriate that your Subcommittee is considering these issues, since Congress has an important role to play in this area. The FAA is operating according to a legislative charter written by Congress, and if there are any deficiencies, it is up to Congress to provide guidance for future improvements. ACAP would suggest that the following elements be included in any legislation or other action the Subcommittee may take as a result of these hearings: (1) reform the way in which the agency is structured and managed; (2) set and periodically revise an agenda for upgrading safety standards, with priorities and deadlines firmly established; and (3) provide the agency with an unequivocal safety orientation. Before turning to the bills being considered by the Subcommittee, it might be useful to outline some of the problems and the background that leads us to these recommendations.

I. Problems in Air Safety Regulation Today

The ability of the FAA adequately to protect the flying public is a subject upon which much has been written lately. In the past six months, three major reports have documented significant failures in the FAA's safety programs.

A. The GAO Report

A General Accounting Office study[1] requested by Chairman Harold T. Johnson and Rep. Elliott Levitas provided an in-depth assessment of how the FAA regulates air safety. The conclusions, based on an analysis of 16 hazards,[2] are unusually blunt and, for members of the flying public, more than a little disturbing. The GAO Report found, among other things, that:

-- "FAA has not been effective or timely in developing systems to identify safety hazards;"[3]

-- "FAA managers do not have a comprehensive planning process" and as a result "FAA actions in dealing with individual safety problems have been or have been perceived to be reactive and ad hoc;"[4] and

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[1] Report by the Comptroller General, "How to Improve the Federal Aviation Administration's Ability to Deal with Safety Hazards" (CED 80-66, February 29, 1980) (hereinafter "GAO Report").

[2] The GAO Report examined aircraft seat strength, cabin material fire safety, child restraint systems, communication problems associated with the control of aircraft on the ground, crew member uniform flammability, crew rest, frangible runway approach light towers, fuel fires or explosions, hijacking, in-flight turbulence, midair collisions, ozone contamination, passenger restraint systems, servicing of aircraft oxygen systems, stalls, and wind shear.

[3] GAO Report at 5.

-- "FAA has no agencywide system of priorities for safety problems," and "as a result, the most appropriate and timely actions to address safety hazards may not have been taken."[5]

Let me cite three examples from ACAP's experience which confirm the GAO's description of an agency using "fragmented, ineffective, and unstructured approaches to the solution process."[6]

1. Seat and Seat Restraint Standards: Commercial aircraft seats are currently constructed and tested under standards adopted in the early 1950s for the lighter and slower aircraft of that era. Today's larger, stronger aircraft are much more crashworthy, but there are still survivable accidents in which people are needlessly killed or injured due to seat failure. As the FAA itself put it, "We have 40 g people riding in 20 g airplanes and sitting in 9 g seats and restraint systems."[7]

In response to this situation, ACAP, along with the Association of Flight Attendants (AFA) and the Flight Engineers International Association (FEIA) petitioned the FAA on 19 October 1977 to upgrade seat strength standards and to require dynamic testing of seats, citing 30 years of scientific study demonstrating the inadequacy of the current standards. Two years later, on 19 October 1979, when the FAA had not formally responded to our petition, ACAP and AFA filed suit in Federal District Court in Washington to compel the FAA to take some action on our petition. Although the NTSB wrote to the FAA in January, 1980 in support of our petition, the FAA dismissed the petition on 18 January 1980.[8]

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[4] Id. at 18.

[5] Id. at 31.

[6] [illegible]

[7] S. R. Mohler, "Crash Protection in Survivable Accidents," Memorandum Staff Study, Office of Aviation Medicine, FAA (4 Feb. 1969); P. V. Siegel, "Transport Category Airplanes: Crashworthiness and Passenger Evacuation," NPRM 69-33, Memorandum, Office of Aviation Medicine, FAA (6 Oct. 1969).

[8] See 45 Fed. Reg. 41439 (19 June 1980).

We petitioned for reconsideration, and the FAA recently held a hearing into the issues raised by our petition. Several studies are now underway, but remedial action seems years away. For passengers, this inaction means that planes being built today, which will still be in service in the year 2000, must meet seat standards set for 1950's aircraft.

One particular failing we've noticed -- and it has cropped up in the FAA's response to other hazards as well -- is the agency's "all or nothing" approach. By this I mean a preference for defining a hazard in the most comprehensive manner possible, whch guarantees that the task is much more complex and takes that much longer to complete. Usually it appears that interim steps are not considered. Let me give you an example from our experience on seat strength standards.

In response to our petition to upgrade seat standards and require dynamic testing, the FAA indicated that it was conducting research with an eye to considering rulemaking on seats as early as 1981. Then in early 1980, the agency switched gears and announced that they were in the midst of a mammoth program evaluating crashworthiness of transport category aircraft and that this program would not be completed until well into the 1980s. Interim action was not contemplated, even though an internal agency report (dated August 1978)[9/] suggested dynamic testing as a short-term method to improve seat crashworthiness. The NTSB has endorsed such an interim approach, but so far the FAA has been unable to say what it will do in response to this recommendation from one of its own departments.

2. Post-Crash Fire Hazards: In many accidents, people may survive the crash forces, only to be killed when fire breaks out. When a fuel tank is ruptured or breached, highly flammable fuel can be released in a fine mist. If ignited, it can produce a large fireball.

According to NTSB statistics, fire can be expected in

[9/] J. Ross, "Initial Project Report: Energy Absorbing Seat Design," Project No. 78-599-120 A, Regulatory Standards and Analysis Branch, Flight Standards National Field Office, Mike Monroney Aeronautical Center, FAA (August 1978).

about 20 percent of all air carrier accidents involving passengers, and over the past 15 years, almost 20 percent of all accident fatalities can be attributed solely to the effects of fire and smoke.[10/]

There are several threats if a fire should break out. People may be killed by the fire itself. Secondly, the presence of fire can dramatically shorten the time available for evacuation. Finally, the fire may lead to combustion of cabin materials, which emit thick black smoke and toxic fumes which make visibility difficult and can overcome people before they can evacuate.

The FAA has been aware of these hazards for a number of years. In the mid-1970s, in response to petitions from ACAP and others, the FAA issued proposed regulations designed to reduce the risks that a fire will break out and the hazards when a fire is present. The FAA held two public meetings in 1977 and withdrew the rulemaking proposals in August 1978, electing to let a new advisory committee (called the Special Aviation Fire and Explosion Reduction, or "SAFER" Committee) provide direction for the FAA's efforts in this area. This decision led some observers to question whether the FAA had chosen a course which meant that even more years would slip by before remedial action was taken. Once again, it appeared that the FAA was pursuing a long-term comprehensive solution, development of anti-misting kerosene, even though that could not be validated until the mid-1980s at the earliest, and development of a technologically elusive "combined hazard index" designed to measure the relative characteristics of cabin materials to burn and emit smoke and toxic fumes. Once again, there were doubts whether this approach meant that no interim approach would be taken.

In response to such criticisms -- some of it coming from members of this Committee -- Administrator Bond appeared before the Oversight and Review Subcommittee in April of last year and testified that: "I intend to bring this issue to a near-term reso-

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[10/] "Aviation Safety (Interior Compartment Materials)," Hearings before the Subcomm. on Oversight and Review of the House Comm. on Public Works and Transportation, 96th Cong., 1st Sess., 5 (1979)(testimony of Elwood Driver, Vice-Chairman, National Transportation Safety Board.

lution. I do not want to appear before you in 2 or 3 years, or for a successor of mine to have to do so, to tell you that we are still wrestling with the problem. The FAA is going to grab onto this issue, and we are going to make the best decision we can with what we know."[11/]

The Special Aviation Fire and Explosion Reduction Advisory Committee recently completed its work and is preparing its final report to Mr. Bond. The report contains a series of interim programs which can be implemented and completed in the short-term, along with a series of longer-term recommendations, many of which the FAA has undertaken and which should mean further improvements in the future. ACAP is pleased to see the promising signs on the horizon, but we believe it is up to Congress to make sure that the FAA keeps on the right course and does not let this important work get sidetracked some time down the road.

3. Commuter Safety: In 1972, the NTSB issued a series of recommendations to upgrade the standards governing commuter and air taxi operations (14 C.F.R. Part 135). Four years later, when the FAA had taken no final action to implement those proposals, ACAP published a study which showed that commuter accident rates were three times as high as trunkline accident rates between 1969 and 1974. The FAA promptly convened a conference on commuter safety and issued a Notice of Proposed Rulemaking. It was not until 1978, however, that the FAA issued its final rule, and it took another year, until December 1979, before the FAA could certify that commuter operators were in compliance. Although the new rules, coupled with increased FAA surveillance, have cut the accident rate this year, ACAP is appalled that it took seven years for the FAA to improve the level of safety afforded commuter passengers and make the standards for commuter aircraft as comparable as possible to the standards applied to larger aircraft.

The FAA's inability to develop timely and effective solutions to these and other hazards, and its failure to consider or implement interim solutions are graphically described in the GAO report. ACAP believes it makes out a strong case for reform.

[11/] Id. at 187.

B. The Government Operations Committee Report

The second major report this year critical of the FAA, a Report by the House Committee on Government Operations written after an 18-month investigation by its Subcommittee on Government Activities and Transportation, provided a devastating critique of the FAA's certification process.[12] The Committee found that the FAA was "dangerously oriented to the needs of industry management at the expense of the traveling public,"[13] and was failing to adequately ensure the safe design, production and maintenance of airplanes.

In the area of design certification, the Committee found that FAA delegation of authority to industry was so great that "the industry in effect regulates itself."[14] As an example, the Committee noted that when the Washington Post reported a month after the Chicago crash that the DC-10 had never been tested with asymmetric slats at take-off, the FAA had to write to the manufacturer requesting substantiation that the plane was controllable during take-off with asymmetric slats, and asking if McDonnell Douglas had ever considered the dual failure of asymmetric slats and engine power loss or whether it had determined this fact to be extremely improbable.[15] Thus, even though the FAA was not supposed to delegate conclusions as to extreme improbability, "the FAA did not know or have any documentation as to whether an extremely improbable determination had been made."[16]

In the area of FAA review of the production and maintenance process, the Committee found, among other things, that FAA surveillance of production and maintenance consisted of visits announced in advance, with the inspectors ordered to be "discrete" and to "limit" their discussions with employees.[17/] The results of this process are so poor that from 1974 to 1979

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[12] House Comm. on Government Operations, A Thorough Critique of Certification of Transport Category Aircraft by the Federal Aviation Administration, H.R. Rep. No. 96-924, 96th Cong., 2d Sess. (1980) (hereinafter "House Committee on Government Operations Report").

[13] Id. at 4.

[14] Id. at 74.

[15] Id. at 22.

[16] Id.

> between 25 and 30 DC-10 pylon assemblies passed through the Douglas Aircraft Company's quality control system . . . with between 2 and 26 defective fasteners in each assembly. . . . By the time these defective pylons were discovered during inspections ordered by the FAA after the May 25, 1979 accident, some of these pylons were ready to "unzip" or break down under the normal operating stress.[18/]

Although the Committee made many recommendations on how to improve the certification process, the recommendations are structured to be implemented at the discretion of the FAA Administrator. ACAP is skeptical of leaving such important recommendations to the FAA without any guidance or oversight from Congress. As this Subcommittee is aware, FAA Administrators tend to come and go -- Mr. Bond, after only three and a half years in office, has served longer than most of his predecessors -- and what may be an important issue today may not be on the agenda of a future Administrator. That is why it is up to Congress to see that reports of the sort we have cited do not sit on the shelf gathering dust, but are implemented to the extent Congress agrees with the recommendations. Further, the actions taken should be the subject of periodic oversight hearings.

C. The "Blue Ribbon" Committee Report

The third report on the FAA, issued in June 1980 by a "blue ribbon" committee of the National Research Council, National Academy of Sciences,[19/] buttresses the conclusions of the House Government Operations Committee. In the area of type certification, the report questioned the competence of the FAA's tech-

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[17/] Id. at 41, 74, 75.

[18/] Id. at 9, 74, 75.

[19/] Committee on FAA Airworthiness Certification Procedures, Assembly of Engineering, National Research Council, National Academy of Sciences, Improving Aircraft Safety: FAA Certification of Commercial Passenger Aircraft (1980).

nical staff, stating that their supervision of the design process was becoming superficial.[20] While recommending the continued use of Designated Engineering Representatives, it expressed concern about an apparent "trend toward placing more and more reliance on the manufacturer in the course of type certification,"[21] where FAA review consists of only a cursory check on mounds of reports and calculations provided by the manufacturer. In addition, the Committee criticized the FAA's failure to require designers to consider the potential of structural damage caused by conditions outside the design environments, such as maintenance-induced damage, and to ensure that catastrophic effects did not result from such damage. Like the Government Operations Committee Report, the blue ribbon panel also found significant need for improvements in the quality and frequency of FAA surveillance of production and maintenance of aircraft.

These three reports describe an agency unable to identify safety hazards and to provide prompt safety solutions for problems it can identify. This Subcommittee is not unaware of these problems. How long will it be, for example, before a workable collision avoidance system is in place when there are hundreds of near-misses every year? Congress got so frustrated at the FAA's lethargic pace in this area that in last year's "noise bill" (P.L. 96-193), it included a requirement that the FAA report to Congress about its progress in this area on a quarterly basis.

II. The FAA Role in Promoting the Industry

The FAA's failure to address crucial safety issues may be due to its dual mission of ensuring safety while also promoting the industry. Too frequently, the promotion function is displayed by an overly zealous attention to the compliance costs of new safety regulations with scant if any attention paid to the benefits. It is in this area that the agency's safety and promotion functions collide head-on, with the result that new standards are delayed for years. For example, concern over cost was an important element in the FAA's decision not to implement NTSB recommendations that the FAA require the installation of a ground proximity warning system. As FAA Administrator Alexander Butterfield testified in 1974,

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[20] Id. at 5.

[21] Id. at 7.

> I am simply saying that in promulgating a rule which is going to affect everyone, is going to force everyone to buy an $11,000 instrument, a relatively expensive instrument, even though that instrument is probably going to save some lives, I just say we have to be very, very careful about our evaluation.[22]
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> ********
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> We are a public service organization and we have a responsibility to the public and not to any segment of the community. But at the same time, we have a responsibility to maintain the good health and welfare of U.S. civil aviation, so we can't afford to take any action which would cut the pins out from under any segment of aviation. This does, in fact, cause dilemmas when a regulatory body such as the FAA has another almost equal responsibility to keep the industry active and alive and well.[23]

Only after a TWA plane crashed into a mountain near Dulles in late 1974 did the FAA require the installation of such a system.

In commenting on Butterfield's "dilemma," a Special Subcommittee on Investigations of the House Interstate and Foreign Commerce Committee stated in early 1975:

> It is indeed a sad commentary when the Administrator of the agency responsible for aviation safety describes an $11,000 price tag as "relatively expensive" when comparing it to saving lives, or for that matter, saving hull loss in the millions of dollars.[24]

The Subcommittee expressed concern over the FAA's dual responsibility for passenger safety and for the economic well-being of the airline industry,[25] and urged the FAA to "cease viewing passenger safety and the economic health of the airline industry as competing interests to be balanced. It is people who are to be kept 'active and alive and well.'"[26]

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[22] Hearings on Feasibility of Requiring Ground Proximity Warning Systems to be Installed on Commercial Aircraft before the Special Subcomm. on Investigations of the House Comm. on Interstate and Foreign Commerce, 93rd Cong., 2d Sess. 79 (1974).

[23] *Id.* at 81.

[24] Special Subcomm. on Investigations of the House Comm. on Interstate and Foreign Commerce, "Air Safety: Selected Review of FAA Performance," 93rd Cong.,2d Sess. 106 (1974).

FAA concern for cost to the industry has not decreased since that time. For example, the FAA public analysis of the crashworthiness standards for aircraft seats (published in the 19 June 1980 Federal Register) expends much effort discussing the costs of changing the rule. This approach is horribly myopic since costs cannot be considered alone. Benefits must also be considered. To limit one's inquiry solely to costs is similar to asking how much government money would it take for Dr. Jonas Salk to cure polio without also asking what the benefits are in terms of reducing illnesses, cutting hospital and medical costs, and the like.

The one-sided regulatory analysis performed in the process of upgrading standards for commuter safety in 1978 provides another example of FAA concern for cost to the seeming exclusion of other factors. According to the FAA:

> In analyzing the economic consequences of this final rule and its major alternative, primary emphasis was placed on the burdens placed on the commuter and on-demand air taxi operations in the domestic fleet.[27]

Because of the complexities involved in estimating the cost impact of the rule, the FAA commissioned two consultants to assess the cost impact of the individual proposed rulemaking changes.[28]

The Administrator of the FAA was then presented with several briefings on the cost analysis.[29] After these briefings were completed, a decision was made to implement nine of the proposed changes, resulting in a $19 million reduction in the cost impact.[30] One example of the cost savings the Administrator was able to develop after the briefings was the following:

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[25] Id. at 202.

[26] Id. at 107.

[27] Supplementary Information, Federal Aviation Administration Final Rule, Regulatory Review Program, Air Taxi Operators and Commercial Operators, 43 Fed. Reg. 46742, 46749 (10 Oct. 1978).

[28] 43 Fed. Reg. 46749.

[29] "Department of Transportation Reply to GAO Draft Report of November 20, 1979 on 'FAA Should Improve Its Management of Efforts to Identify and Address Hazards to Aviation Safety,' Suggested Corrections/Clarifications to GAO Report," cited in GAO Report at 96

> Item 13 . . . fire extinguishers, was changed from requiring a fire extinguisher in the passenger compartment of each aircraft seating at least six passengers to an aircraft seating at least 10 passengers. This resulted in a reduction in the cost impact from $167,000 to zero.[31]

A safety agency should ensure that any regulatory analysis it performs include considerations of the benefits of safety standards to the flying public, not just the compliance costs to industry, or it should ensure that the regulatory analysis is incidental to the safety issues ultimately being decided.

Perhaps the most striking area of promotion of industry by the FAA is the certification process. The infamous 1972 "gentleman's agreement" where Douglas agreed to fix the DC-10 cargo door if the FAA agreed not to put out an Airworthiness Directive that might scare off potential buyers is the best known and most egregious example. If the recent Government Operations Committee investigation is to be believed, attitudes of FAA personnel have not changed much since then.

> FAA's inspectors often seem to act as management consultants rather than informed regulators with a variety of investigating and disciplinary tools at their disposal, and a mandate to use them. Despite the protestations of the current FAA Administrator to the contrary, evidence indicates many FAA personnel and policies seem oriented toward promoting and protecting the industry's economic well-being rather than maintaining the highest level of safety.[33]

A review of the legislative history to the 1958 Federal Aviation Act suggests that Congress thought it was creating an agency which would put safety first, an agency which would not delay implementing safety improvements while going through lengthy procedures to determine how much it would all cost. This is made clear in the Senate Report accompanying the Federal Aviation Act of 1958, where it is explained:

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[30] Id.

[31] 43 Fed. Reg. 46759.

[32] 43 Fed. Reg. 46756.

[33] House Comm. on Government Operations Report at 4,5.

> The theory that rulemaking is to be done only by a body of judicially minded, disinterested laymen applies well in the field of economic regulation. There the problem is one of balancing competing business interests; technical problems, if existent, are largely incidental. The theory tends to break down, however, when applied to the promulgation of minimum aviation safety standards. Here, the competition, if any is between men and machines; the standard to be applied being principally determined by existing technical considerations. Competing economic interests may indeed be involved, but here it is they that are incidental.[34/]

As we have just described, it cannot be said that economic interests were incidental to the FAA's decisions concerning ground proximity warning systems, aircraft seat strength, commuter safety and certification.

How has the intent of Congress to create an agency either unconcerned or only incidentally concerned with economics been so subverted? To a large degree the problem lies in the promotional language found in sections 103[35/] and 305[36/] of the Federal Aviation Act of 1958.

Section 103, the Declaration of Policy, contains virtually unchanged certain portions of the Declaration of Policy of the original Civil Aeronautics Act of 1938, which, in light of the then-fledgling character of the aviation industry, called for economic promotion. Section 103 thus calls upon the FAA Administrator to consider the following, among other things, in exercising his power:

> (a) The regulation of air commerce in such manner as to best promote its development and safety and fulfill the requirements of national defense; [and]
>
> (b) the promotion, encouragement and development

[34/] S. Rep. 1811, 85th Cong., 2d Sess. 10-11 (1958).

[35/] Federal Aviation Act of 1958, 72 Stat. 740, 49 U.S.C. § 1303.

[36/] Federal Aviation Act of 1958, 72 Stat. 749, 49 U.S.C. § 1347.

of civil aeronautics.[37]

The legislative history of the 1958 Act indicates that much of the Act had been "recast in its revised form merely as a matter of convenience" and that "the reenactment unchanged of present provisions of the Civil Aeronautics Act or Air Commerce Act should not be interpreted as a congressional reaffirmation of those provisions."[38] Thus, the reenactment creates an ambiguity between the promotional language of the statute and the safety intent of the Congress.

Section 305 of the Federal Aviation Act of 1958[39] also contains promotional language. It reads:

> The Secretary of Transportation is empowered and directed to encourage and foster the development of civil aeronautics and air commerce in the United States and abroad.

Like section 103, section 305 simply repeats a section of the Civil Aeronautics Act of 1938.

When the FAA was placed into the Department of Transportation in 1966, the promotional duties of section 305 were purposefully delegated to the Secretary of Transportation, while the aviation safety duties of the 1958 Act were delegated through the Secretary of Transportation to the Federal Aviation Administration.[40] Unfortunately, the Secretary of Transportation immediately redelegated his authority under section 305 back to the Administrator, leaving the Administrator with both the promotional policy and duties of sections 103 and 305 of the Federal Aviation Act of 1958. See 49 C.F.R. § 1.47(a).

ACAP believes that Congress has intended since 1958 for the FAA to concentrate solely on safety, but that this intent has not always been carried out, partly because of sections 103 and 305 of the Federal Aviation Act. Removing these responsibilities from the FAA would be in keeping with the original intention of the 1958 statute and would be in line with recent regulatory reform recommendations[41] that regulatory functions be severed from promotional functions, as was carried out in 1974 when Congress split the Atomic Energy Commission into the Nuclear Regulatory Commission and the Energy Research and Development Administration. The fear was that keeping the energy research and development aspects in an agency designed to promote one type of energy might stunt development of alternative energy sources.

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[37] The Declaration of Policy of the Civil Aeronautics Act of 1938, Pub. L. No. 75-706, 52 Stat. 973 had similarly required the consideration of:

(e) The regulation of air commerce in such manner as to best promote its development and safety; and
(f) The encouragement and development of civil aeronautics.

[38] S. Rep. 1811, 85th Cong., 2d Sess. 22.

[39] Federal Aviation Act of 1958, 72 Stat. 749, 49 U.S.C. 1346.

[40] S. Rep. No. 1659, 89th Cong., 2d Sess. 9-11 (1966).

Looking at the issue more philosophically, one might ask why does a large, healthy aviation industry really need a government agency to promote it? It has been 77 years since Kitty Hawk and we are now more than 20 years into the jet age. Aviation is no longer a fledgling infant industry, and regulating the industry as though it were may not be in the best interests of the flying public.

With this in mind, we now discuss the bills before this Committee.

III. Proposed Legislation and Suggestions for Reform

The Subcommittee has before it three bills, each of which attempts to improve air safety regulation through different approaches. Let me comment on each one in particular and offer some suggestions ACAP has for making improvements in this area.

A. H.R. 351

Rep. Goldwater's bill (H.R. 351) would remove FAA as now constituted from the Department of Transportation and make it an independent agency, as it was from 1959 to its incorporation into DOT in 1966. The rationale for this approach is set forth in section 2 of the bill, where it is said that the relationship between FAA and DOT since 1966 "has been characterized as arbitrary and capricious control" by the Office of the Secretary over "the entire range of Federal Aviation Administration activities. Such excessive and unreasonable control, exceeding the intent of Congress, . . . has had deleterious and debilitating effects on the conduct of the vital safety mission" intended for the FAA. By making FAA a separate agency, the bill attempts to promote a more prompt and vigorous response to safety hazards which can be made by an FAA Administrator who is better able to exercise his best independent judgment.

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[41] Report by the Subcomm. on Oversight and Investigations of the House Comm. on Interstate and Foreign Commerce, Federal Regulation and Regulatory Reform, 94th Cong., 2d Sess. 555 (1976).

ACAP is certainly in agreement with the goals of this legislation, although we note that alleged DOT interference with the FAA may be only one factor contributing to the FAA's shortcomings.

B. H.R. 6771

Rep. Levitas' bill (H.R. 6771) would leave the FAA within DOT, but would make the agency responsible for strictly air safety and would remove all promotional and other responsibilities. This is a constructive approach which, we submit, would reform the FAA's charter and bring it more closely in line with what Congress intended in the 1958 statute. If safety were the sole standard used to evaluate FAA performance, such a reform would help alleviate the problems described earlier in this statement. It would eliminate the ability of an FAA Administrator to fall back on "industry promotion" as an excuse for inaction and end dilemmas of the sort described by former Administrator Butterfield in his testimony to Congress on the ground proximity warning system. The approach taken in the Levitas bill, if properly administered and properly overseen by Congress, would be a major step forward.

C. H.R. 7850

Rep. Matsui's bill (H.R. 7850) contains certain aspects of the Goldwater and Levitas measures but reflects, overall, a third approach. In effect, H.R. 7850 would split the FAA in two: an independent agency (the Air Safety Administration) would be split out of FAA and made responsible for certification, setting standards and conducting the vital research and development work necessary to upgrade these standards. Left within the

Department of Transportation would be an Aviation Operations Administrator, which would be responsible for the "operation l" as opposed to the "regulatory" side of aviation safety, i.e., operating the air traffic control system and administering safety improvements and expenditures from out of the Airport Trust Fund. As I understand Rep. Matsui's statement in the 28 July Congressional Record, the new ASA would be responsible for regulating airmen and aircraft, while the AOA would carry out the day-to-day operations with respect to airports and airways.

H.R. 7850 is an interesting concept which ACAP believes addresses a number of the problems we have mentioned earlier. We are inclined to agree with Rep. Matsui's assessment that the R & D and standard-setting functions can get buried within the agency in its efforts to carry out the many functions assigned to the FAA. Both the GAO Report and the blue ribbon panel cited deficiencies in the rulemaking process and the FAA's ability to keep up with current technology as areas for improvement. To the extent that the Matsui bill would split off those functions and put them in an agency responsible to Congress, the Matsui bill should be given close scrutiny. I would note that the concept of dividing responsibilities in a given area is not new. As noted earlier, the licensing and R & D functions of the AEC were split into the NRC and ERDA, respectively. Perhaps more germane to aviation safety is auto safety, where the National Highway Traffic Safety Administration handles automobile safety while the Federal Highway Administration deals with highway development, administering the Highway Trust Fund and the like.

One of the other ideas in the Matsui bill which has considerable promise is the requirement that the ASA and AOA outline their regulatory agendas to Congress each year. This would go a long way to meeting the criticisms that the agency rulemaking process needs an overhaul to identify hazards and deal swiftly with remedying them.

D. Regulatory Reform Proposals

In addition to adopting the key reform elements of the bills we have discussed thus far, Congress should consider some regulatory reform proposals which go hand-in-hand. The most important recommendation we could make is greater oversight by the Subcommittee and others of how well the FAA is doing its job. Air safety gets a lot of attention from the public and the media whenever there is a crash, but it is the day-to-day work on air safety which can make the difference whether or not an accident takes place. Periodic oversight would help assure that the FAA is dealing with hazards in the manner Congress desires and would help alleviate the problems of management failure and stop-and-start responses of the sort cited in the GAO report in particular. One particular area where oversight could provide important safety benefits would be periodic hearings on how the FAA is responding to NTSB recommendations. In many areas discussed in today's testimony, the NTSB made recommendations for changes for years before the FAA finally complied. The Subcommittee could ask what activity the FAA has undertaken in response to the Safety Board's recommendations, when action is targeted for completion, whether the agency has enough personnel and funds to do the job, and the like.[42/]

Secondly, the Subcommittee should pay attention to improving the rulemaking process. It is frankly appalling how long it takes the agency to respond to some hazards, and there are several things which Congress can do to improve things: (1) examine whether enough attention is being paid to R & D, particularly when the hard scientific facts needed to support a rulemaking are inadequate; (2) assure adequate staffing and funding for researchers and the personnel who translate scientific findings into final rules; (3) establish deadlines for issuance of an Advance Notice or Notice of Proposed Rulemaking (or dismissal of a petition) when changes in FAA standards are requested, and (4) require

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[42/] The safety consequences of FAA failure to listen to the NTSB are well described in the list of "I told you so" recommendations provided by the National Transportation Safety Board in "Aviation Safety (Aircraft Passenger Education--The Missing Link in Air Safety)," Hearings before the Subcomm. on Investigations and Review of the House Comm. on Public Works and Transportation, 95th Cong.,1st Sess. 347 (1977).

FAA to consider and lay out interim corrective measures which could be taken before a final rule is issued, particularly if the change cannot be made until several years down the road.

ACAP believes these proposals would go a long way towards improving the FAA's regulation of air safety.

Thank you very much.

TESTIMONY OF CORNISH F. HITCHCOCK, ASSOCIATE DIRECTOR, AVIATION CONSUMER ACTION PROJECT, ACCOMPANIED BY MATTHEW H. FINUCANE, STAFF ATTORNEY

Mr. HITCHCOCK. Thank you, Mr. Chairman.

I was planning on cutting my statement down to about 10 minutes, but in light of the hour, I will try to make that 5, so I hope you will bear with me as I try to cut through it.

We commend the subcommittee for holding these hearings at this present time. Airline safety is an issue that is always talked about whenever there is a crash, but it is the hard work that goes on between accidents which can make the difference between whether accidents occur.

Aviation safety is a subject that much has been written about lately. There are three reports that have been considered. Instead of going through them in detail, as some of the other witnesses have done, what I would like to do is limit our comments to two particular aspects. One is the rulemaking aspect, which was the particular focus of the GAO report and with which we had some experience as petitioners and participants before FAA in rulemaking proceedings. And the second is the promotional aspect, which is the focus of the Levitas bill and is also mentioned particularly in the Government Operations Committee report.

With respect to the rulemaking function of the FAA, which is critically important, because it is where safety is built in from the start and determines how airplanes are certificated, I am sorry to say that our experience tracks the conclusions which were made in some of the reports—in particular, the delay in setting standards, the inadequate data base, the willingness of the FAA to define the problems so broadly that immediate solutions are not implemented, the failure of the agency to consider interim action of a remedial nature, and the tendency to react rather than anticipate particular instances.

I have cited several examples in the testimony from our experience. I will not go through them in detail. The facts are set out at some length in our statement. Let me just deal with one that is of current interest that has been the subject of recent oversight hearings before Congressman Mineta's subcommittee, and that is the adequacy of seat and seat restraint standards.

The current standards were set in the early 1950's for the lighter and smaller aircraft of that era. They have not been upgraded since then, and you have a number of accidents where people can be killed or seriously injured when their seat collapses on them or rips loose and catapults about the cabin.

In 1977, we asked the FAA, along with the Association of Flight Attendants and Flight Engineers to upgrade those standards. Two years went by. We took them to court to compel an answer. They responded all right—they dismissed the petition, even though it had been supported in a number of NTSB recommendations, and it had been supported by a number of outside scientific researchers, who said more safety is needed. It had even been supported by the FAA's own staff, the Office of Aviation Medicine in particular.

The FAA recently did hold a hearing, partly in response, I think, to some oversight hearings several months ago, but it still looks like remedial action will be years away. It is really incredible, when you think of the fact that planes being built today are going to be flying in the year 2000, but the seats that are put in them must only meet standards which were set in the early 1950's. We see the pattern here of delay, not considering the rulemaking petition on a timely basis. The FAA claims there are now problems of an inadequate data base, they do not have all the accident figures, they do not know how many are dealing with seat failures as opposed to other problems, which may have impaired evacuation or impaired survival. They sent us a letter indicating that it is being considered as part of a mammoth crashworthiness project which cannot be finished until the mid-1980's, and they are not considering interim action even though—and I think this is particularly interesting—one of their own reports done internally suggests that some of the reforms we suggested could be implemented and would have the benefit of providing greater safety and also conceivably reducing the weight of seats. Stronger does not necessarily mean heavier.

The postcrash fire hazard has, as Mr. Fary mentioned earlier, been discussed at length, and I will not go into that.

I think commuter safety is another issue where we have had some experience, where it took 7 years between the time that the NTSB issued recommendations saying, "Upgrade Part 135 to improve commuter safety," 7 years until those recommendations were, No. 1, issued, and No. 2, the FAA made certain that all carriers were in compliance with the new regulations.

I would like to move quickly to the promotion aspect which has been a subject of some controversy. The FAA, in some hearings that we have observed before this committee and others, has spoken about the promotion function. I think several illustrations will bear it out.

Mr. Bond comes before the subcommittee and testifies that promotion is not a concern of his. This stands in distinction with one of his predecessors, most notably, Mr. Butterfield, who told the House Commerce Committee several years ago that promotion was considered "an almost equal" responsibility to "keep the industry active and alive and well," and he used that as a justification for not requiring the installation of equipment, which he admitted will save some lives. The gentlemen's agreement was mentioned by Mr. Burton this morning and is well known to this committee, and I will not go into it.

One area where we have seen particular concern for industry promotion in the broad sense is a really overzealous concern on the part of the FAA for the cost of regulations, and what is particularly myopic about this approach is the failure of the FAA to consider the countervailing benefits as well. It is as if somebody asked, "how much is it going to cost for a national program to cure polio, what are going to be the costs of having national vaccination centers," without also asking "what are the benefits of curing polio, preventing people from being in iron lungs and wheelchairs and braces and the like." And we have cited several examples in our testimony where this has come up. Again, in the seat area, in refusing to take action on our petition, they analyzed the costs, but they did not analyze the benefits. They did not say, "Are our standards adequate?"

The final rule on commuter safety issued in 1978 spent page after page talking about how the FAA was able to trim down the compliance costs by $19 million, and the consideration of how much safety would suffer was not really addressed to the same extent.

When you look at the legislative history of the 1958 Federal Aviation Act, there is a strong suggestion—and this is covered in some detail in the Government Operations report—that Congress thought it was setting up a safety agency, and the promotion language was carried forward from the 1938 Civil Aeronautics Act, simply to recast it merely as a matter of convenience. In 1966, when DOT incorporated FAA, the promotion functions were supposed to be in the hands of the Secretary, but they were immediately delegated back to the FAA, and you thus create this conflicting standard. You have a series of very broadly written criteria which tell the agency to do a number of things, and as Mr. Burton mentioned this morning, their lawyers can go to court and say, "Well, we have this dual mission. We are not going to ground the DC-10's, because we have a duty to promote the industry." Even if Mr. Bond later comes before Congress and says that is not his concern and that he does not agree with that, future Administrators may.

That brings me to the legislation. Congressman Goldwater's bill focuses on the DOT interference with FAA, but it seems to us that may be only one factor contributing to the FAA's shortcomings, and there did not seem to be any analysis of that in the three recent reports.

The Levitas bill takes a stab at dealing with the promotion versus safety function, and it is a good starting point for this discussion. Congressman Matsui's bill suggests a different kind of split between the safety functions, one agency to deal with airmen and aircraft, the other to deal with the safety of airports and airways. Although the latter is titled the operations agency, as I read the bill, it does deal with safety.

In conclusion, I would like to emphasize two things. The first is one that a lot of other witnesses have mentioned, the importance of who you have doing the job. If you have a good Secretary working with a good FAA Administrator, you can get a lot done, and safety can be enhanced.

But there is a more important question, and that is, since Administrators come and go and Secretaries come and go, what are the operative guidelines that will be used to instruct leaders of these agencies? And this is where Congress has a particularly important role. The subcommittee has before it a number of proposals, recommendations, studies, for how do we improve the FAA.

What we would recommend with the rulemaking area, I think, is in general agreement with the blue ribbon committee report and the GAO report. And if I had to pick one element, I would say centralizing the engineering organization, as the blue ribbon report said. I think that is consistent with the Matsui bill, of breaking off the certification and rulemaking functions and keeping them within one agency. Maybe you could do it differently and keep it within FAA or within DOT. There is also the need to take the initiative and lead, to upgrade the current technical lag between FAA and the industry; hazard identification; assuring adequate research and development; keeping the funding and staffing adequate, keeping the agenda set out, considering interim solutions and insuring full public participation at all stages of the rulemaking. These are the types of criteria that we think Congress should consider for legislation to provide guidance for the future, and we would also suggest that you consider adequate oversight, to make sure the job that you have set forth for the agency to do is being carried out.

That concludes the summary of our statement, and we will be happy to take any questions.

Mr. ANDERSON. Thank you, Mr. Hitchcock.

In your testimony, you criticize the FAA's all-or-nothing approach to alleviating safety hazards. You believe that in following this approach, the FAA looks only to ultimate solutions and does not take desirable interim measures.

What do you think Congress should do to get the FAA to move to an incremental approach in cases in which this would be desirable?

Mr. HITCHCOCK. I think what you could do is, in line with the last series of recommendations that I made, take a general regulatory reform approach, require the FAA to come before you on a regular basis and say:

> This is our regulatory agenda. These are the major hazards which we have identified on a basis of NTSB accident recommendations, service difficulty reports fed into our computer, and other sources which indicate that there is a hazard. This is what we believe is feasible within the state of the art. This is what we believe is feasible within the current staffing and funding levels, and if you want to give us more, we could do the job that much faster. This is what we think we could do over the short term. This is what we think we could do over the long term.

That is the sort of approach which I think would, as a regulatory reform package, provide that kind of interim guidance.

I should note, as I mentioned in the testimony, that Mr. Mineta's subcommittee has held some hearings on the cabin safety issues, in particular—fires and seats and toxic cabin materials and so forth. I think it would be particularly useful if this subcommittee, as the principal aviation subcommittee, were to try to institutionalize that kind of oversight, have the FAA come in here—they have their regulatory agenda published, as Mr. Bond said, on a monthly basis—and lay out what exactly are their priorities, how do they arrive at them and how they are going to implement them, what are the timetables, those sort of considerations, which I think are consonant with the GAO report and also the blue ribbon report.

Mr. ANDERSON. Do you believe that the FAA should continue to use designated engineering representatives in the aircraft certification process, and do you think any changes in the DER system are needed?

Mr. HITCHCOCK. It is an interesting question. It seems that both the blue ribbon report and also the Government Operations Committee report, acknowledged the necessity of DER's. As an ideal situation, if you are going to have a regulatory agency, I think we prefer to have it being done by the regulators.

And as I listened to one of your questions this morning, there seems to be a cross-current in the two reports. On the one hand, there is the tendency of FAA to keep delegating more and more responsibility—the overdelegation aspect—out to the DER's, and then there is the recommendation in the Government Operations Committee report to somehow pull the reins back in and keep a tighter lid on the situation and keep tighter control, to assure that they are doing their job.

Frankly, I am not sure where you can draw the line exactly to have that kind of quality control. It is a disturbing situation as a policy matter to have that much responsibility delegated to the employees of the manufacturer. And I think it would take particular sensitivity to try to rein in the amount of delegation.

I think you could probably do that in the context of a reorganization of the sort recommended by the blue ribbon committee, setting up the central engineering function, if you could attract the high caliber personnel that they are talking about to serve as an oversight to provide guidance. I think that might be one way to provide an adequate quality control on the work done by DER's.

Mr. ANDERSON. In your testimony, you criticize the FAA for paying too much attention to the cost of safety regulations that it is considering. Do you think the FAA should give any weight to the cost of proposed regulations, and if so, do you have any suggestions for the weight which should be given to cost impact?

Mr. HITCHCOCK. Well, I am not sure I could rate safety on a scale of 1 to 10, as did the previous witness. There is something to be said for the argument of getting the most safety possible for the buck. And there is something also to be said for the argument of considering how much something is going to cost.

The problem is that considering costs, really cannot be the be-all and end-all. If you cannot do a good cost benefit analysis, that is not an adequate basis for saying, "We are just not going to regulate in this area." The GAO report makes that point, I think, rather eloquently, that this sort of analysis and consideration of costs along with benefits—which we find lacking in some of the rulemakings that we have been active in—must be used as a tool, as an aid to the decisionmaker. But if you have got good people making those decisions, to consider the costs and the benefits as part of the overall regulatory approach, you can get a rule which can promote safety and do so in a manner which is good for the traveling public.

Mr. ANDERSON. Are you aware of any instances in which the Department of Transportation has prevented the FAA from carrying out a desirable safety program?

Mr. HITCHCOCK. Frankly, no, sir. And if I may, I would like to add a point on that. It comes up in the question of whether there should be an independent FAA or not.

I think one of the issues that has been running through this whole debate, and one that has not been addressed head on, is the question of accountability; to whom is the FAA really accountable.

Within the DOT, it is accountable as a line agency to the Secretary of Transportation, and if he or she is very safety-oriented and aviation-oriented, as is the FAA Administrator, you can get good results. The FAA is also accountable to the Congress, who writes the legislation, appropriates the money, and conducts periodic oversight hearings.

It is a tough question, the question of accountability. I mean, you do have it if the FAA is within DOT, but you also have the problems of the sort Mr. Goldwater is concerned about, where the DOT can in some instances, as he cited yesterday, override safety decisions, or put them to one side, or denigrate their importance.

Mr. ANDERSON. Your testimony indicates general support for the Levitas bill, under which nonsafety functions would be transferred to the Department of Transportation Secretary. What FAA functions do you think should be transferred to the Department of Transportation under this bill?

Mr. HITCHCOCK. Our approach is for the thrust of the bill—it is very difficult, because there is not a line department of promotion, as such. Mr. Levitas, I understand, has a relatively full list of so-called nonsafety-related functions. It is a more fundamentally philosophical question as to what marching orders does Congress give to the agency. It is a point which was made by Mr. Bond in his testimony before the Government Operations Committee, and it is printed at page 94 in the report. Does the FAA think of itself as the cop on the beat, which we think is the desirable approach, or does it think of itself as a coach?

As you remember from your work on the Airline Deregulation Act, one of the most controversial issues was the declaration of policy, section 102 of the Federal Aviation Act; what marching orders should Congress be giving to the CAB to implement airline deregulation?

I think it is the same sort of question with respect to the promotion function. Do we want an agency which has standards which can conflict with each other, promotion of safety while also promotion of the industry? And if you have those sort of standards, the agency really has a free hand to regulate, and you diminish the possibility of accountability, of saying, "Hey, you are supposed to be safety oriented, and you are paying too much attention to promotion."

So it is a policy question of how do you inculcate the will and the desire to be vigorous and go out and regulate.

Let me make a suggestion, which I will throw out for your consideration. One of the blue ribbon committee report's recommendations went to rejuvenating and reinvigorating the agency. There is a possibility that if you were to set up the type of central engineering organization either within FAA or in DOT as a separate agency, or even independently, that you might be able to establish that sort of high priority on safety in the certification and rulemaking functions that you can achieve the desirable safety benefits of some other Government safety-oriented agencies and task forces that the blue ribbon committee report cites.

So in that sense, the promotion function, taking it out of the FAA's responsibility, may be creating a new safety organization and might go a long way toward promoting the goals of making the FAA entirely safety oriented.

Mr. **Anderson.** Mr. Fary?

Mr. **Fary.** No questions, Mr. Chairman.

Mr. **Anderson.** Thank you very much, Mr. Hitchcock, for your presentation.

Mr. **Hitchcock.** Thank you, Mr. Chairman.

[The following was subsequently received for the record from Mr. Hitchcock:]

Aviation Consumer Action Project,
Washington, D.C., August 28, 1980.

Hon. Glenn M. Anderson,
Chairman, House Subcommittee on Aviation,
Washington, D.C.

Dear Mr. Chairman: During your recent hearings on legislation to reform and reorganize the Federal Aviation Administration, several witnesses referred to ACAP's position on various air safety issues. Because the references were, we believe, misleading and because time limitations did not permit a reply during our oral testimony, I would like to submit for the record this letter to clarify our position.

1. In his prepared statement, FAA Administrator Langhorne M. Bond stated "(w)hen we proposed that all passengers aboard an air carrier aircraft keep their seatbelts on during flight, there was an outpouring of negative sentiment, including opposition from the Aviation Consumer Action Project." That statement is not an accurate reflection of the proposed rule or our position. ACAP strongly believes that passengers should keep their seatbelts fastened during flight. The key issue, as we see it, is how to best achieve that goal.

The FAA in 1978 proposed a mandatory rule requiring all passengers to buckle up in flight. Under the proposal, the passengers would be unable to get up and move about the cabin unless they first received permission from flight attendants, except when passengers had to get up for "physiological needs."

ACAP suggested that FAA not adopt a mandatory rule for two reasons: (1) it was probably unenforceable, and the agency should not issue rules it can not enforce, and (2) a 1978 report by the FAA's Civil Aeromedical Institute showed that many turbulence-related injuries occurred while people were in the lavatory or walking in the aisle; for these people, the rule would be ineffective. Significantly, the most serious turbulence injury cited in the CAMI study was sustained by a passenger who was in his seat with his seat belt fastened—a youngster who suffered a fractured skull when the aircraft hit a patch of clear air turbulence.

Thus, the concept was excellent, but the proposal as drafted had problems. That is what prompted us to suggest that FAA stress passenger education about turbulence hazards and put placards on seat backs encouraging people to buckle up and warning of the hazards of not doing so. The proof of the pudding is in the eating: the FAA's final rule tracks our proposal.

What is significant about this proposed rule from a procedural standpoint is that it took FAA four years from receipt of a rulemaking petition on the problem to come out with a proposed rule and another two years to issue the final rule. Leaving to one side the merits of the idea, here was a straightforward suggestion which was well within the state-of-the-art, yet it took six years to process. Such unconscionable delay buttresses the case for overhauling FAA rulemaking procedures.

2. During questioning from Rep. Mineta, Messrs. von Kann and Thomas from the Air Transport Association mentioned the existence of an FAA-industry task force which met in 1976–77 to discuss proposed standards for limiting the emission of smoke and toxic fumes in a fire. At the time, FAA had issued a proposed standard for each of these hazards, had received public comments and was contemplating what action to take. When ACAP learned of the existence of this group, which had been meeting behind closed doors with no notice to the public, we asked whether such ex parte communication was allowed under the Federal Advisory Committee Act (FACA). Apparently, it was not, for the task force was quickly disbanded.

Mr. Thomas's testimony suggested that the task force was developing an ambitious program to tackle cabin safety hazards and decried the fact that this work was delayed because FAA had to constitute a replacement SAFER Committee under FACA. This testimony leaves on the record the unfortunate—and inaccurate—impression that the tasks force was pushing full speed ahead on resolving these hazards and would have been much further advanced had ACAP not questioned the procedures. ACAP would like to set the record straight, particularly since Mr. von Kann testified that Congress should exempt FAA from FACA so that such ex parte sessions could resume on a regular basis.

In the first place, it is doubtful whether industry spokesmen at these closed sessions were urging FAA to push boldly ahead with new standards. At a public hearing on cabin materials in late 1977—several months after the informal task force had folded—industry representatives urged deferring the issuance of final rules on fire, smoke and toxic fumes until a "combined hazard index" had been developed. Such an index would measure the tendency of various cabin materials to burn, emit smoke and give off toxic gases, and the integrated approach was suggested even though technical experts stated that such an index was beyond the state of the art. Thus, adoption of the industry proposal would have delayed rulemaking for years.

Second, Mr. Thomas blamed the Federal Advisory Committee Act for the delay in setting up SAFER. The chronology does not appear to bear this out; poor administration by FAA seems a more likely explanation. It took FAA from the winter of 1977 until June 1978 to announce a SAFER Committee would be formed. It took another two months for FAA to receive applications and another nine months for the first meeting to convene. Although FACA requires advisory committees to be "balanced," it does not require inquiry into applicants' race, sex or political affiliation, and it is hard to believe the presence of these questions on the application form really held things up very much.

Finally, what is perhaps most instructive aspect of this incident is the fact that the FAA, in a vital safety area, failed to provide leadership and prod industry more aggressively through the establishment of new standards. Instead, FAA functioned as what an article in the December 1979 Washington Monthly called a "regulatory democracy," quoting a former FAA official who observed that "if those it regulates don't like a proposed rule, FAA will abandon it."

Thank you again for the opportunity to submit these comments.

Sincerely yours,

Cornish F. Hitchcock,
Associate Director.

Mr. Anderson. Our final witness is Stanley Lyman, executive vice president, Federal Aviation Science and Technological Association, of the National Association of Government Employees.

Mr. Lyman, the full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF STANLEY Q. LYMAN, EXECUTIVE VICE PRESIDENT, FEDERAL AVIATION, SCIENCE, AND TECHNOLOGICAL ASSOCIATION

Mr. Chairman Members of the Subcommittee on Aviation:

The Federal Aviation Science and Technological Association (FASTA) appreciates this opportunity to appear before your Subcommittee, and we want to thank you for the continuing and active concern you have exhibited for safe and effective utilization of the national airspace system. The 8,000 Federal Aviation Administration (FAA) electronics technicians represented by FASTA also take an active interest in aviation safety. We are here today to transmit the concern of these personnel to you as you deliberate on a group of bills, H.R. 351, H.R. 6771 and H.R. 7850, designed to alter the jurisdictional authority of the FAA.

H.R. 6771 and H.R. 7850 would divide the responsibilities of the FAA by separating those functions which are safety related from other functions, primarily those of an operational nature. As we understand the intent of these measures, the division of the FAA is designed to elevate aviation safety to a higher level of priority than it currently receives.

While the FASTA agrees that the FAA tends to slight safety considerations, we do not believe that the solution to this problem lies in breaking the FAA into separate organizations. We fear that relegating the responsibility for safety to a distinct structure would result in organizational confusion and impaired communication and decision making. Further, costs would increase because of redundant activities and duplicative staff.

Safety is part and parcel of almost every FAA activity. For example, although preventative and corrective maintenance and the testing of airway facility navigational aides, radar, and communications equipment are daily tasks which, under H.R. 7850, would fall to the proposed Air Operations Administration, these tasks are basic to the reliability of air traffic control information and hence a foundation for safe utilization of the national airspace system. Thus, safety is an integral part of operational tasks.

Consequently, the FASTA does not believe safety can be split off as the responsibility of a separate unit. Currently, the certification of airway facilities is carried out by those individuals maintaining the equipment. After testing a system or sub-system to be sure it is within parameters, the technician documents the results of the test in a log book. This documentation is the actual certification of the equipment. This is a sensible efficient system. Having maintained and tested the equipment, these people are in the best position to certify that it is operating properly. There is no way that someone who has not worked on the equipment can judge its reliability as well as someone who is intimately familiar with the system's condition.

Further, there is no sense in hiring additional people to perform tasks currently being done by qualified individuals already on board. As noted above, certification is now performed by field electronics staff who would most likely be employed by the Air Operations Administration because of their maintenance duties. Under H.R. 7850, the rating and certification of air navigation facilities would be the responsibility of the proposed Air Safety Administration. Consequently, this provision would necessitate the employment of individuals trained to certify airway facility equipment. The personnel costs associated with this additional staff is excessive because it is unnecessary but for the spliting of FAA functions.

Under H.R. 7850, the Air Operations Administration would have the function of acquiring, establishing and improving air-navigation facilities. However, we understand that the Air Safety Administration is to be responsible for the research and development of airway facility equipment. (This would have to be accomplished through an amendment because of an oversight in the drafting of the bill). The result of divorcing the actual improvement of facilities from the research and development of those facilities is bound to be chaos. How is the Air Operations Administration to plan for the implementation of new facilities and equipment systems when they have no control over the research and development of those facilities and systems? Further, how is the Air Safety Administration to assess the need for researching or developing new systems when they are not involved in the day to day operation of the national airspace system and hence are not knowledgeable of the details of system needs? The FASTA does not believe that the Safety Administration's responsibility for certifying airway facilities would provide them with the information they will need to direct airway facility research and development. Those who work with the system on a daily basis know, not only which systems and sub-systems are subject to frequent malfunctioning and overloading, but they also understand the causes of these problems and the situations in which they are most likely to occur. This kind of inside information is essential to prescribing direction for the research and development of new systems. Further, it is information that the Operations Administration will be without, unless there is an unusally high degree of communication between the two proposed administrations.

In addition, if there has been a problem to date with the adequate and accurate maintenance of records on equipment failures, there is nothing in this bill that suggests an improvement in this situation. In fact, we fear that the need for the two administrations to share records and the inevitability of redundant record keeping will cause greater confusion than currently exists.

If enacted, H.R. 7850 would put the condition of airway facilities in the hands of two separate jurisdictions. Thus, the bill would result in confused accountability and in excessive personnel costs.

Problems, similar to those outlined above, are likely under H.R. 6771 also. As provided by H.R. 6771, the Secertary of Transportation would determine which of the FAA's functions pertain to aviation safety. These functions, powers and duties would remain the responsibility of the FAA and all others would be performed by the Secretary of Transportation. Because we cannot conceive of a logical separation of the FAA's functions, any split devised by the Secretary is bound to be as fraught with problems as the division provided for under H.R. 7850.

The only improvement H.R. 6771 makes over H.R. 7850 is that all functions would remain under the umbrella of a cabinet level department. This has two advantages. One, it would create fewer impediments to communication, and, two, it would allow aviation safety to remain subject to the attention of the Cabinet.

However, there also is a drawback to this arrangement. Although H.R. 6771 provides for the FAA to focus exclusively on safety, there is no guarantee that aviation safety would receive priority treatment within the Department of Transportation. In fact, there is a real possibility that aviation safety would become a poor step child to other aviation matters. In contrast, under H.R. 7850, the Air Safety Administartion would be an independent agency. The Safety Administration's activities and budget would be subject only to congressional control. This assures a vigorous stand on aviation safety, although, again, we cannot say that this advantage outweighs the communication problems inherent in removing aviation safety functions from the Department ultimately responsible for aviation operations under both bills.

In summary, the FASTA must oppose the proposed separation of FAA functions. Safety is an integral part of aviation operations. To split aviation safety off, either within the Department of Transportation or as an independent agency, would ultimately impair both safety and operations.

Another measure, H.R. 351, offers a third option. H.R. 351 would keep the FAA's functions intact, but would transfer all of them to an independent agency. The attractiveness of this proposal is its potential for freeing the FAA from layers of departmental administration. Under H.R. 351, aviation matters would be considered completely on their own merits without regard to the competing interests of other transporation administrations.

However, the FASTA has difficulty justifying independence for the aviation administration. We do not see aviation as more unique or important to national transportation than the Coast Guard, highway, railroad or other transportation administrations. Further, we do see advantages to the FAA being part of a cabinet level department. Consequently, while we appreciate the arguments in favor of H.R. 351, we are not prepared to support the measure.

While the FASTA cannot support the measures being considered today, we do believe something must be done to enhance the FAA's attention to aviation safety. As noted in the General Accounting Office's report How to Improve the Federal Aviation Administration's Ability to Deal with Safety Hazards: "FAA has not been effective or timely in developing systems to identify safety hazards...FAA has not established a comprehensive planning process -- a basic element of management -- within which it defines organizational objectives, policies, and priorities in relation to its safety mission... it must put additional mechanisms in place which would assure the preparation, review, and approval of formalized safety project plans...FAA's system of controls to guide and monitor safety project work has been inappropriate and too informal to constitute a viable and credible means of monitoring work progress [and]..evaluation and appraisal have received varying commitment and attention during FAA's history."

The FASTA believes these problems can be addressed with only minor changes to the FAA's current structure. We concur with the Comptroller General's recommendation that the FAA establish a top management group to identify overall safety priorities and review and approve of safety project plans, and we agree that such a group would facilitate the on going commitment of various FAA offices to broad based safety projects. We also support various other recommendations made by the General Accounting Office. Taken together, the suggestions should result in a much higher degree of attention to aviation safety and a much more systematic approach to the identification and resolution of safety problems.

In conculsion, the FASTA believes the General Accounting Office's recommendations constitute a much wiser approach to improving aviation safety than the proposals which involve fragmenting aviation concerns by relegating the responsibility for aviation safety to a separate organizational unit.

Once again, we thank you for this opportunity to provide our views and we thank you for your continuing attention to matters of aviation safety.

Mr. **Anderson**. Please proceed.

TESTIMONY OF STANLEY Q. LYMAN, EXECUTIVE VICE PRESIDENT, FEDERAL AVIATION SCIENCE AND TECHNOLOGICAL ASSOCIATION, NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, ACCOMPANIED BY DEE SCANLEY, LEGISLATIVE STAFF

Mr. **Lyman**. Thank you, Mr. Chairman.

I would first like to introduce, before I get started, Ms. Dee Scanley, a member of our legislative staff.

I would also like to thank the chairman for utilizing the old adage of saving the best for last. We think we are the best of the group.

Mr. **Anderson**. I was just going to apologize for keeping you here so long, but somebody has to be last.

Mr. **Lyman**. I will summarize our statement, Mr. Chairman.

I first would like to thank you and the members of the subcommittee for giving us the opportunity of appearing before the subcommittee and for the subcommittee's continuing interest in safety, and in behalf of the 8,000 electronics technicians that we represent around the country, I wish also to extend their thanks to you for your continuing efforts in their behalf, and for your concern about their well-being and their working conditions as employees of the FAA.

Our statement, I think, makes our position very clear, that we are opposed pretty much to all three bills that are before this subcommittee. That that is not to say, however, that we are perfectly satisfied with the status quo; we think that the status quo at this time is preferable to the three alternatives presented by these bills.

That is not to say that we have not had problems with the FAA regarding safety and their lack of concern, as we see it, for safety issues, for in fact, we have had many problems with the FAA over the years in the safety area, as it pertains to electronics technicians and others that are represented by our organization.

The areas of safety have involved staffing of electronics technicians; the condition of computers, that this subcommittee and many other committees of Congress have heard much about over the past months. The facts are that as a result of FAA's approach to applying safety in this computerized system of theirs, the number of outages of equipment are going up, and the time of the outages of equipment are going up rather than going down, which is contrary to what FAA presents in their testimony today, or yesterday, and in the past.

We have attempted to point out to FAA that their philosophy of reducing staffing and reducing preventive maintenance is not in the best interests of the users of the system or in the public interest or in the interest of Congress. We think that it has been a sham on the part of the FAA when they testify to the fact that reducing staffs while increasing sophisticated equipment is going to improve the safety aspect of the FAA.

We have seen over the last few years a system change from basic tube-type equipment to the solidstate equipment to automated equipment. We have seen the basic system change to a highly sophisticated process today which requires long hours of training to maintain this sophisticated equipment. And we have seen the FAA fail to apply the necessary procedures or staff or requirements to provide a proper safety program.

Reducing maintenance and reducing staff affects equipment, and that is a fact. The record of outages and of problems with equipment around the country are plain and available to this subcommittee and anybody else. I want you to take the time to study what is happening with this equipment around the country.

We feel that FAA has made some attempts to make corrections. We are not saying that the system is totally going down the drain. We feel that the efforts they have taken to improve are not sufficient, not in the right areas, in many cases. We think that the system, as good as it is, obviously can be made much better, and we would hope that Congress and others who control the funds and the other necessary mechanisms and legislation will allow or give the FAA the funds and the opportunities to go forward and make these improvements.

We think that the cost involved in splitting FAA up, if that is what were to happen, or to separate and make it an independent agency, we think that the costs involved in these areas would be best utilized in using those moneys to improve the system as it is now, to get the people in that are needed to work on the sophisticated equipment, to give those people who are there the training and the ability to train, to work on that equipment, rather than go back to a period of time—at least in one instance, one of the bills, as we see it, would go back to prior to 1958, when the reporting within FAA was multireporting systems, which created chaos as to who was doing what and who had the responsibility for doing what.

Mr. Chairman, we think our statement pretty clearly delineates our position as regards to these bills.

We thank you for the opportunity of appearing before this committee. We always look forward to it. If you have any questions we may answer, we will be happy to do so.

Mr. **Anderson**. Thank you, Mr. Lyman.

On page 4, you suggest that there have been problems with recordkeeping on equipment failures. It has been suggested by other witnesses in testimony before our committee and elsewhere that there has been a deliberate attempt by the FAA to cover up unreliability of equipment.

Do you endorse this view, and if not, what is the source of the problem on recordkeeping?

Mr. **Lyman**. We certainly do not endorse the alteration of records. We are totally opposed to it. It presents a false picture of what is actually happening, obviously.

Where the pressure comes from—and let me add, we certainly believe that it is going on around the country within the FAA—unfortunately, there is pressure applied within various levels of management within the FAA to make the system appear that it is doing something that in reality, it is not. And the pressure comes from within the supervisory and managerial levels of the FAA, and is applied downward into the work force of—at least, within our work force—the electronics technicians.

As a result, unscheduled outages of computer equipment, radar equipment, and communications equipment that occur on a number of occasions appear within the FAA records as being scheduled outages. By having it listed as a scheduled outage, of course, it does not go contrary to what FAA is saying, which is that the equipment is 98.9 percent reliable. In fact, that equipment is not 98.9 percent reliable, and the alteration of these records result.

Mr. **Anderson**. Your testimony supports the GAO recommendations for improved FAA management, and you refer specifically to a system of identifying hazards. Do you see a need for improved hazard identification in the facilities and equipment?

Mr. **Lyman**. Yes, very much, so, very much so. We think that there is a great need for improvement in that area on the part of the FAA. I think again, the history of FAA and FAA management is that when these hazards are pointed out by those that are required to work in the areas, with suggestions that will improve the system or eliminate those hazards, they tend to ignore them and consider them as frivolous.

Mr. **Anderson**. How would you improve hazard identification?

Mr. **Lyman**. Well, I think one of the ways is by relying more on the reports of what a hazardous problem is as it comes in from the people working out in the area, the work force, the troops, as they are known, out in the field. I think that a greater opportunity of letting those people participate in reporting those hazardous areas and, in fact, working with management in the FAA to correct those hazards would be a big step forward.

Mr. **Anderson**. You suggest there are advantages to the FAA in being a part of the Department of Transportation. Can you outline these advantages, as you see them?

Mr. **Lyman**. Well, it is rather a difficult question. We do say there are advantages. They are, quite honestly, difficult to see on the surface. We think there is a benefit to having a Cabinet-level individual reporting or responsible for the operation of the FAA. We think it is important to have a direct line to the President of the United States. And we think by having a Cabinet-level individual responsible for FAA, that individual can voice the concerns of what is happening within FAA; and the President would take into consideration much more quickly what is reported to him by that individual, rather than the FAA Administrator representing an independent agency.

I do not believe, by the way, sir, that the FAA Administrator—this one or any that I have known over the last 15 years that I have dealt with the FAA—has ever had any difficulty in going to the Secretary of Transportation and meeting with him. I am not saying that the Secretary always does what he is asked or always recognizes a problem, but I know of no occasion when there has been a problem in having the FAA, at least when we have asked them to meet, get together and meet and discuss problems.

Mr. **Anderson**. The FAA testified that it really does an adequate job of planning and prioritizing, but that it does this informally, without leaving a paper record for the GAO auditors.

Do you believe that the FAA is doing an effective job in planning and establishing priorities?

Mr. **Lyman**. No; I do not. I think they ought to formalize their process and again, in that formalization, to rely or bring into that process those people who are working outside of the managerial, supervisory levels, to have them come in and take part in the process, procedure, of either improving equipment, research and development, or identifying the hazards. I think they have been sorely lacking, even in this informal process that they talk about. And the informal process that they have used is usually gathering together a number of managers who take a few minutes to discuss the supposed problem, and then may spend the rest of the time talking about many nonrelated matters dealing with other than the working conditions.

Mr. **Anderson**. Mr. Fary?

Mr. **Fary**. No questions, Mr. Chairman.

Mr. **Anderson**. Thank you very much, Mr. Lyman, for your presentation.

Mr. **Lyman**. Thank you, Mr. Chairman.

Mr. **Anderson**. These hearings are adjourned.

[Whereupon, at 6:12 p.m., the subcommittee was adjourned.]

[The following were received for the record:]

STATEMENT OF JOHN L. BAKER, PRESIDENT, AIRCRAFT OWNERS AND PILOT ASSOCIATION

I am John Baker, president of Aircraft Owners and Pilots Association. AOPA is the largest aviation organization in the world and our members represent the largest single identifiable group of citizens affected by actions of the Federal Aviation Administration.

We represent general aviation which is the world's largest air carrier. This year general aviation will carry more than 120 million persons intercity. This is more than 22 of the certificated route airlines combined. AOPA members, who authorize us to speak in their behalf, own or have long-term leases on more than three-fourths of the general aviation airplanes in the U.S. and fly nearly two-thirds of all the general aviation flight hours.

I point this out to indicate the significance of viewpoint represented by AOPA. In a personal way, I bring to you experiences based on working as an assistant administrator of the FAA during the time when the first full effects of consolidation with the Department of Transportation were being felt.

We fully endorse the concept of removing the Federal Aviation Administration from the Department of Transportation. The separation of promotion from safety is, in our view, not practical because safety in itself is the strongest promotion for air transportation.

First, let us look at the subject of a separate FAA. In theory, the concept of combining all forms of transportation into one cabinet level position would seem proper. When the Congress did this it was with the full intent of making maximum advancements in all forms of transportation with the most efficiency and greatest economy.

In practice, however, this has not worked out. There is a basic reason why. Air transportation and the technology necessary for it to properly serve the public, are extremely technical subjects. Air transportation has little, if anything, in common with other means of transportation. Air transportation operates in a third dimension. Air transportation operates at significantly higher speeds. Air transportation does not need right of ways. Air transportation operates in unlimited numbers of directions into and out of a finite number of ground bases. Air transportation operates with specific requirements for communication, weather information and economic requirements totally unique from other forms of transportation.

These characteristics demand talent and attention from uniquely qualified technical persons. The D.O.T. has not provided these qualities. On the contrary, we have seen a succession of D.O.T. Secretaries who were politically motivated and technically unqualified. This has resulted in an inordinate amount of concentration on railroads and urban transportation and a woeful neglect of the nation's needs for air transportation which is the primary intermediate and long haul mode.

In the past ten years we have seen only one major airport constructed.

In the past ten years there has been an increase of 75,000 aircraft and the civil fleet flew 15 million more hours last year than it did ten years ago. Yet there has been little progress in developing an air traffic system to accommodate this growth.

The tragic consequences of this neglect to air transportation was witnessed recently in these Congressional chambers when the present Secretary of Transportation announced a decision to use funds to curtail the public's demand for air transportation.

It is an arrogant disrespect for the American people for a Secretary of Transportation to even imply that bureaucratic rulemakers will decide whether or not people can use air transportation. The Department of Transportation was established to find solutions, not exacerbate existing problems. It was established to provide leadership to meet the transportation needs. It was not established to set real or artificial constraints on transportation demands. There is no need for a massive department and its associated expenses of people's money merely to reduce travel to a preconceived level set by some political appointee.

The leadership this nation needs relates to solving problems constructively, not ignoring them or substituting populist rhetoric for action. To say this nation will constrain demand on transportation because a government does not find it expedient to build to meet the public needs is like the Secretary of Health and Welfare saying there shall be no more doctors trained therefore the government will decree there shall be less illness.

Ten years ago the Congress recognized the needs and passed legislation creating special taxes to fund a program for airway and airport development. Under the direction of the Department of Transportation these funds have not been spent.

The Aviation Trust Fund now has more than $4 million of uncommitted funds. These funds were paid by people who believed the word of the Secretary of Transportation and his agents a decade ago. We have seen ten years of broken promises.

The law specified that "no less than $250 million would be spent each year for airway development."

Only once--in 1973--did the FAA/DOT spend more than the MINIMUM amount specified in the legislation for airway development.

If facilities and equipment transfer is deducted, this means less than 69% of the MINIMUM dictated by Congress was actually spent from the trust fund for airways.

On the other hand, the Congress limited the amount of money which could be spent on operations and maintenance. The law originally allowed the balance of money in the Trust Fund--after airport and airway capital investment needs were taken care of--to be used for administration of these programs and maintenance of air traffic control. The Administration attempted to fund all FAA operations from the Trust Fund in the early years of the program. So, in 1972 Congress deleted the authorization for O&M but partially reinstated it in 1976 with specified amounts. These amounts were to be reduced on a formula basis if airport and airway funding fell below the stipulated levels.

The DOT/FAA did reduce the airways and airport funding but did not reduce the O&M expenditures. These "not to exceed" dollars were exceeded during 1977, 1978 and 1979.

Under the Department of Transportation these funds have become a prize plum for picking to support urban transportation and railroad programs. We in aviation recognize there is a need for these ground activities. But they must not be funded by special taxes on people directly using air transportation for community and national wellbeing.

The smothering of the FAA by technically unqualified D.O.T. supervision has not only retarded efficiency of service to the air traveling public, it has also caused a potential for reduced safety.

Here's one example. Weather information--accurate and current--is essential for safe operation of aircraft. For general aviation this information is gathered and disseminated through Flight Service Stations. The FAA has had a program to modernize these facilities. But for nearly a decade little or no action has been taken. As a result, pilots today sometimes fly with only marginal information about weather.

Following the lead of the federal government, several states have combined their aeronautical departments into a central department of transportation. Almost without exception this has caused an equal decline in aviation matters at the state level. A notable example is the state of California. This once proud state in aviation matters now has dropped to a point where recently a community in the northwestern part of the state was told the aeronautics department did not have a person qualified to provide engineering assistance in the design of an airport.

We urge you to free the FAA from the shackles of a Department of Transportation.

In regard to a separation of authority from the FAA, we submit that safety and promotion are inseparable.

Nothing promotes air transportation like safety promotes it. The biggest single deterrant to a universal acceptance of air vehicles is an unfounded and confused concept of safety. There is no question but that the United States has the safest air transportation system in the world. Certainly there are areas for improvement. Although we can never achieve perfect safety we must, nevertheless, continue to strive for it.

This striving, however, cannot be isolated from promotion. The Federal Aviation Administration is--or should be--an advocate for safety and efficient use of the national resource--airspace. It best serves as an advocate by a dedication to safety.

Frankly, we have never seen the FAA undertake promotion of aviation in the accepted sense of selling. In fact, we have often been critical of the FAA that it has not done enough to inform and educate about the value and benefits of air transportation.

If the wraps under which the FAA operates under the D.O.T. are removed, we are confident it can better serve the public interest and the specific user interest through safety and promotion functions.

AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA, INC.
[illegible] STREET, N.W. WASHINGTON, D.C. 20036 TEL. 347-[illegible]

August 28, 1980

The Honorable Glenn Anderson
Chairman
Subcommittee on Aviation
Committee on Public Works and Transportation
U. S. House of Representatives
2165 Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Chairman:

In response to your press release of August 4, 1980, announcing your Subcommittee's hearings on legislative proposals dealing with the safety mission of the Federal Aviation Administration, the Aerospace Industries Association of America, Inc. (AIA), wishes to express its views on the three subject bills. As the representative of the nation's major manufacturers of aircraft, aircraft engines and related components and equipment, AIA has an ongoing commitment to the safety and productivity of the U. S. aviation system. Understandably, we view with sharp concern any proposals which might be seen as unnecessarily altering or undermining the American aviation system, which is one of the safest, if not the safest, in the world.

For this reason, we would have to take exception to the proposal by Representative Elliott Levitas, H. R. 6771, which would separate the FAA's safety responsibilities from its so-called aviation promotion mandate. Rep. Levitas cites the General Accounting Office report entitled, "How to Improve the Federal Aviation Administration's Ability to Deal with Safety Hazards," as the basis for his bill. However, we note that the GAO, while offering several substantive recommendations for changes in the FAA's safety function, never differentiated FAA's safety activities or recommended that they be separated from the FAA's other functions. Almost all FAA responsibilities involve safety; the creation and maintenance of a safe system are the primary means of enhancing and promoting aviation.

Passage of the Levitas proposal would both impede and destabilize the aircraft type certification process and airport development programs by dividing authority over them between two different agencies. Further, it would be lamentable to lose the check and balance system achieved by having environmental and safety specialists within the same agency. Such a change might result in onerous and unsafe environmental standards involving aircraft. In short, we find that the Levitas measure would offer no improvements and, indeed, would introduce many counterproductive elements into a process which is presently working satisfactorily.

Similarly, we would oppose the even greater fragmentation of responsibility represented by H. R. 7850, which would create two new agencies without taking any responsibility away from either the FAA or NTSB, resulting in four cognizant agencies to replace the present two. We believe this would constitute an even greater step away from responsibility and authority.

Conversely, our reservations about fragmentation of responsibility and our faith in the basic functioning of the FAA would lead us to support, in principle, establishment of the FAA as an independent agency outside of the DOT, as proposed in H. R. 351. However, we feel that the Administrator of the new agency and its legal counsel should be appointed for a fixed term to reduce the adverse effects of political pressure.

Before any of these bills are passed, however, we would suggest that your Subcommittee endorse the report issued recently by the National Research Council of the National Academy of Sciences, entitled, "Improving Aircraft Safety: FAA Certification of Commercial Passenger Aircraft" and direct the FAA to publish a schedule for the implementation of the 17 recommendations therein. After a suitable period, the operation of the system could then be reassessed and appropriate legislative action taken, if needed.

That concludes our comments. Please let us know if we can provide additional information. We have followed your hearings with interest and trust that our views can be included in the printed record.

Yours very truly,

Karl G. Harr Jr.

Karl G. Harr, Jr.

NASAO

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Executive Vice President

August 26, 1980

Hon. Glenn M. Anderson, Chairman
Aviation Subcommittee
Committee on Public Works and Transportation
U. S. House of Representatives
Washington, D. C. 20515

Attention: Record of Hearings, H.R. 6771

Dear Mr. Anderson:

The National Association of State Aviation Officials, representing the aviation interests of 48 States and Puerto Rico, respectfully requests that the following statement be accepted and made a part of the record of Subcommittee hearings of August 20 and 21, 1980, addressing H.R. 351, a bill to establish an independent Federal Aviation Agency; H.R. 6771, a bill to provide that the Federal Aviation Administration shall only perform functions relating to aviation safety; and H.R. 7850, a bill to improve the operation of the Federal Government's aviation safety activities.

The NASAO, whose member state aviation agencies have worked closely with the Federal Aviation Administration since its inception, and earlier, with its predecessors, the Federal Aviation Agency and the Civil Aeronautics Administration, must disagree with the intent and purpose of the three bills cited. We do not believe any of the bills under consideration would make a positive contribution toward enhancing the safety capabilities of the FAA — nor are the extreme measures advocated by these bills necessary to accomplish what should basically be a change in the management mode of the FAA.

We believe that those administrative problems which currently exist within the FAA are not caused by the agency's "dual role responsibility" for both aviation safety and promoting the civil aviation industry. We believe that a close study of the General Accounting Office Report, "How to Improve the Federal Aviation Administration's Ability to Deal With Safety Hazards" (publication CED-80-66, February 29, 1980) bears this out. The G.A.O. study has identified the main problem areas as essentially a lack of proper management and inappropriate organizational structure. Both should be correctable within the present basic structure. Neither can be assuredly corrected by simply splitting the organization. They may, in fact, be exacerbated.

Further, the GAO report, cited as a basis for H.R. 6771, concerns itself exclusively with ways to improve the safety functions of the Federal Aviation Administration -- those that would presumably be left in FAA under the provisions of H.R. 6771. Nowhere in this report do we find any recommendation for as draconian a step as splitting the agency.

On the contrary, there are ample statements from the GAO investigators to indicate that the FAA is well aware of many of the problems cited and, within the limits of manpower and budget, is making progress toward solutions:

> "Many recent actions show that FAA has recognized deficiencies in its hazard identification and analysis. Since late 1978 FAA has made changes that indicate an improved management commitment in this area. In November 1978, for example, the Office of the Associate Administrator for Aviation Standards was created, encompassing both the Office of Aviation Safety and the Flight Standards Service. On March 2, 1979, the Office of Aviation Safety committed the agency to a new safety analysis project based on a 1978 study of safety analysis in rulemaking." - Pg. 13.
>
> "In the past, FAA has recognized the need for more formalized plans and agency-wide commitment to address similar management issues. Its establishment of a formalized system acquisition management process is one example." - Pg. 25.
>
> "FAA has recognized that management decision making can be made more timely and effective when an agency-wide process exists to concentrate efforts on common objectives." - Pg. 26.
>
> "Cost-benefit analysis has long been recognized by FAA as a useful tool to aid decision making." - Pg. 38.
>
> "The FAA Administrator, recognizing some of the shortcomings of the rulemaking process, announced on September 14, 1979, major revisions to FAA regulatory procedures." - Pg. 46.

Manpower Constraints/Workloads

The GAO Report addresses some of the organizational changes that have taken place within FAA between 1977 and 1979. It does not, however, consider what has happened to the overall manpower levels compared to the increasing responsibilities that FAA must accommodate.

> In the period September 1977 to September 1979, FAA full-time permanent employment dropped from 55,760 to 54,444 -- a decrease of .95%. (Table 1)

TABLE 1

	Total Full-Time Employees	Controllers	% Controllers	Others	% Others
9/77	55,760	27,800	49.8	27,960	50.1
9/78	55,227	27,778	50.2	27,449	49.7
9/79	54,444	27,774	51.0	26,670	48.9
% Change	-.95%	-.09%		-4.61%	

Source: FAA Office of Personnel and Training

In that same period, the air traffic controller work force remained relatively constant: 27,800 in 1977 and 27,744 in 1979. However, full-time permanent employees available to perform all other functions of the FAA decreased from 27,960 to 26,670 -- a drop of 4.6 percent.

During this same period, total FAA National Airspace Facilities increased from 17,337 to 18,384 (6.0%); the Airports Grant Program increased from $434.3 million to $506.6 million (16.6%); and most FAA programs in all other non-safety areas increased in both size and complexity -- in some cases, caused by non-aviation requirements imposed through other federal lawmaking (environmental; minority business considerations).

(Appendix Chart 1 shows the growth of airport-related programs from 1947 through 1980 as an example of the increased workload in just this one area of FAA activity. Chart 2 shows the decline of manpower available to handle these responsibilities. These are included only as an example of one area of FAA activities for which the information was available.)

The realities and effects of the personnel shortages vs. workloads within FAA are certainly recognized in the GAO Report on safety shortcomings:

> "Establishing the Administrator's Safety Advisory Group and ranking broad safety issues and problems facing aviation will require a large commitment from FAA personnel..." - Pg. 27.
>
> "A study completed in July 1979 by the Flight Standards Service.... indicated that Flight Standards had insufficient staff to conduct mission functions. Also, results indicated safety project work was affected both by the total staff commitment to do this work as well as by competing work responsibilities." - Pg. 43.
>
> "...in July 1979...the Acting Director, Flight Standards Service, requested his division/staff chiefs to outline how recent Washington staffing reductions had affected programs to date and to assess the consequences of further reductions...
>
> -- "Since our staffing has been reduced, many of our major programs have been affected as we are barely able to keep up with the dav-to-day work such as answering congressionals, correspondence, and high priority work items. (Emphasis added.)
>
> -- "The general problem created by these reductions is that managers and staff specialists are now able only to react to immediate situations. This leaves very little time for planning, analyzation, and objective long-term program guidance..."
>
> -- "The attached listing of target date slippages shows at a glance the effect of insufficient staffing on current projects. You will note that delays of as much as 15 months exist presently...." - Pgs. 43, 44.

"A June 1978 analysis of staffing and workload in one Flight Standards Service division showed that routine activities (often referred to as demand work, unprogrammed work, etc.) used from 50 to 80 percent of its staff resources..." - Pg. 44.

"Many FAA officials told us that workload has increased while staffing has been reduced. They believe that this has resulted in (1) FAA being unable to pursue some safety work due to other responsibilities, and (2) a loss of timeliness and quality on work that was being performed". Pg. 44.

It should be noted that the ordinary functions of processing paperwork — an information/communications function of any large organization — is seen as a major detriment to FAA efficiency in handling safety matters. However, this paperwork is related to those safety functions for which FAA is responsible and it is difficult to conceive how it could be handled better if it were removed from FAA's jurisdiction. It would be better, we believe, to authorize additional clerical and administrative positions for the FAA to apply to breaking the internal bottlenecks.

Further, the GAO calls for more reporting and more documentation by the FAA of its safety regulatory actions. This, it seems, should support the claim that the FAA needs, or would need, additional help in the administrative functions.

Recommendations

The GAO Report makes many specific and, NASAO believes, worthwhile recommendations for changes in the FAA's ways of doing its business dealing with aviation safety hazards:

1. "We recommend that the Secretary of Transportation direct the FAA Administrator to:

--Prepare a comprehensive long-range plan (1) to improve FAA's identification of safety hazards and (2) laying out the problems to be solved, the integration of various systems to solve them, and milestones for arriving at solutions.

--Monitor the progress of the overall safety information effort at the highest management levels within FAA and periodically report progress to the Secretary of Transportation.

--Adhere to milestones for plan implementation.

--Explore all means for obtaining a common FAA/NTSB approach to accident information.

--Achieve better coordination of human factors research by establishing an agencywide human factors spokesman and preparing a comprehensive statement of position on human factors, an FAA human factors definition, an agency long-range plan, and a summary of dollars spent or needed on human factors research.

2. "We recommend that the Secretary of Transportation direct the FAA Administrator to establish (1) a comprehensive planning process which defines organizational goals, objectives, policies and priorities to guide the overall safety mission and provides a frame of reference for planning and approving specific safety efforts, implementing individual safety project plans, and evaluating safety projects and (2) a top management group, which might be called the Administrator's Safety Advisory Group, to identify overall safety priorities."

3. "We recommend that the Secretary of Transportation direct the FAA Administrator to:

--Develop formal safety project plans showing how the total agencywide solution is to be accomplished. Elements of the formal plan should include a specific and detailed description of at least the following:

-- Problem.
-- Safety contribution.
-- Objectives.
-- Requirements.
-- Alternative solutions.
-- Interim corrective actions.
-- Costs and benefits.
-- Coordination.
-- Resources.
-- Milestones.
-- Results desired.
-- Responsible official.
-- Priority.

-- Require that formal plans for individual safety projects be reviewed and approved at the Associate Administrator level. Where agreement on requirement, resource commitment, etc., between organizational components cannot be effected at the Associate Administrator's level or on broad efforts involving more than two organizational components, a top management group, such as our recommended Administrator's Safety Advisory Group, should be the principal body for reviewing and approving specific and detailed safety project plans."

4. "We recommend that the Secretary of Transportation direct the FAA Administrator to:

-- Prepare an annual report on the safety evaluation activities, both as planned and achieved, by the Office of Aviation Safety. Also, monitor the safety evaluation activities of this Office.

--Assign appraisal responsibilities and the requisite manpower resources to the Program Review Staff, Office of the Associate Administrator for Administration, to conduct independent and objective agency-wide evaluations of major areas or issues of concern, or assign this responsibility to a new organizational component reporting to the FAA Administrator.

--Establish permanent procedures to ensure that adequate feedback about compliance is obtained on nonregulatory safety actions.

We further recommend that the Secretary of Transportation have FAA's management of its safety mission periodically evaluated, including assessing the annual report on the Office of Aviation Safety's evaluation activities."

The National Association of State Aviation Officials believes that the majority of these changes, if justified by further study, can be accomplished within the present FAA structure with the support and assistance of the Congress. The division of FAA into two separate organizations within DOT would further complicate an existing communications problem between FAA and those of us who deal on a daily basis with them. There is now too much compartmentalization and lack of decision making authority at the lower levels. Dealing with two separate agencies on matters which normally have overlapping concerns can only create more red tape and delay.

Congress can, in its own right, direct the Administrator of the FAA to implement any or all of the recommendations the GAO has suggested for the Secretary of Transportation to recommend to the FAA Administrator.

Congress can mandate an annual report from FAA to cover progress made in achieving specified goals, objectives, policies and priorities.

It can require evidence of a "comprehensive planning process" as outlined by the GAO on page 19 of the Report.

The Congress -- and only the Congress -- can authorize and appropriate the additional funds the FAA will need to improve its efficiency and effectiveness from the Aviation Trust Fund.

We also believe it is necessary to examine some of the concepts that have been loosely used in both the proposed bills and in the hearing testimony. We refer specifically to two: *safety* and *promotion*.

Safety, in the aviation context, has been accurately defined by the Flight Safety Foundation as "*The management of risks*." As such, it cannot be considered an absolute. It is not a destination *per se* -- it is the conduct of the journey towards a destination (e.g., minimizing the hazards of air transportation).

Promotion has been almost universally treated in testimony in the sense of commercial merchandising. But "promotion" can also be defined as creating an environment that makes aviation growth -- and safety -- possible. It includes communication and consultation with the industry. It includes participation on the part of FAA personnel in industry meetings, discussions, and deliberations on present problems and future directions. Although it is not always possible to identify specific safety enhancement benefits from such activities, they are absolutely essential to the smooth functioning of the total aviation system. And these liaison activities can only be performed by the FAA people involved in the day-to-day functioning of the agency.

We do agree with several hearing comments to the effect that a problem exists in the continuity of FAA administration -- "Administrators come and go." One means of addressing this would be the creation of an Aviation Safety Advisory Commission with congressional authority to oversee and set policy for FAA safety activities. It could be composed of volunteers, appointed to staggered five-year terms, representing the Congress, industry, state and local government, and concerned user groups. As a congressionally mandated body, it should have direct access to appropriate congressional committees, and would be responsible only to the Congress.

We would be in agreement with taking the ADAP Trust Fund out of the unified budget. Only unfunded and unnecessary government spending fuels inflation. The use of this five billion dollar trust fund surplus to make a deficit budget look better is a fraud on the taxpayer and the users of air transportation.

In conclusion and summary, the overall safety record of our air transportation system has been excellent. We see no reason to amputate the leg to cure a minor infection of the big toe. We agree there are numerous areas pointed out in the GAO report that, with proper management and improved organization, should result in increased safety for the public.

We also feel that some of these problems would be solved with more attention, support, and cooperation from the parent DOT to the FAA.

We recommend that since the problems have been identified, the FAA should be provided with the support required to implement the actions necessary to give the system a chance to work. Fragmenting responsibilities into separate agencies may lead to a paralysis of existing programs over the several years it would take to complete the reorganizations and achieve harmonious functioning of the new entities.

Further delays are not consistent with the degree of urgency implied by the GAO report.

Respectfully submitted,

Joseph G Mason

For the NATIONAL ASSOCIATION
OF STATE AVIATION OFFICIALS

CHART 1

-AIRPORTS PROGRAMS-
HISTORY OF PROGRAM FUNCTIONS
FISCAL YEARS 1947 THROUGH 1980

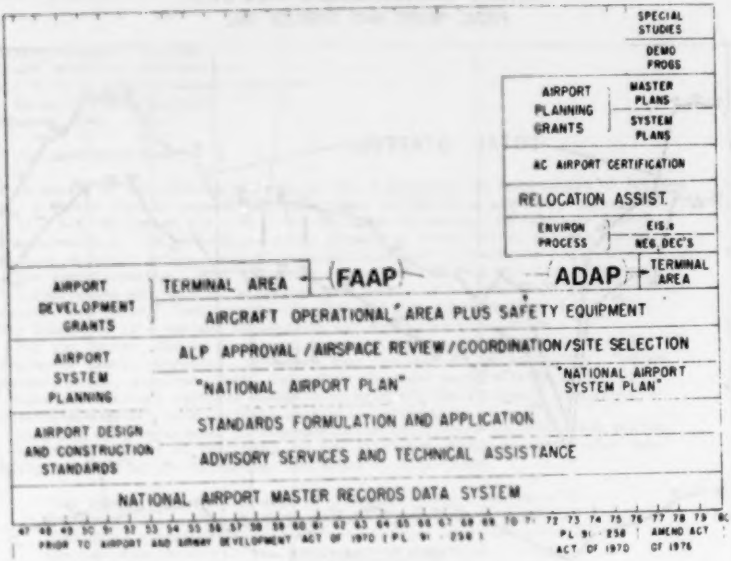
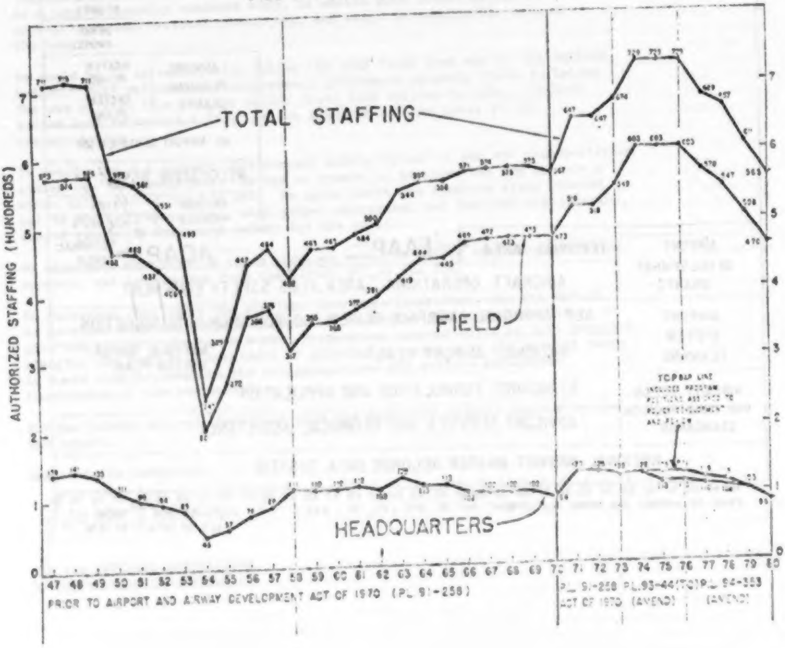

SPECIAL STUDIES
DEMO PROGS
AIRPORT PLANNING GRANTS
MASTER PLANS
SYSTEM PLANS
AC AIRPORT CERTIFICATION
RELOCATION ASSIST.
ENVIRON PROCESS
EIS.s
NEG. DEC'S
AIRPORT DEVELOPMENT GRANTS
TERMINAL AREA
FAAP
ADAP
TERMINAL AREA
AIRCRAFT OPERATIONAL AREA PLUS SAFETY EQUIPMENT
AIRPORT SYSTEM PLANNING
ALP APPROVAL / AIRSPACE REVIEW / COORDINATION / SITE SELECTION
"NATIONAL AIRPORT PLAN"
"NATIONAL AIRPORT SYSTEM PLAN"
AIRPORT DESIGN AND CONSTRUCTION STANDARDS
STANDARDS FORMULATION AND APPLICATION
ADVISORY SERVICES AND TECHNICAL ASSISTANCE
NATIONAL AIRPORT MASTER RECORDS DATA SYSTEM
47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80
PRIOR TO AIRPORT AND AIRWAY DEVELOPMENT ACT OF 1970 (P.L. 91-258)
PL 91-258 ACT OF 1970
AMEND ACT OF 1976

Chart 2

AIRPORTS PROGRAMS

HISTORY OF AUTHORIZED MANPOWER

FISCAL YEARS 1947 THROUGH 1980



TRANSPORTATION ASSOCIATION OF AMERICA
PAUL J. TIERNEY
PRESIDENT
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August 26, 1980

Honorable Glenn M. Anderson
Chairman, Aviation Subcommittee
Public Works & Transportation Committee
U.S. House of Represeentitives
Washington, D.C. 20515

Dear Chairman Anderson:

On behalf of the broad membership of the Transportation Association of America (TAA), I should like to express our opposition to the three aviation safety bills, H.R. 351, H.R. 6771, and H.R. 7850, that are now the subject of hearings before your Subcommittee. As we understand the purpose of these bills, all are designed to improve aviation safety through organizational restructuring of the Federal Aviation Administration. H.R. 351 would remove the FAA from the U.S. Department of Transportation and make it an independent agency; H.R. 6771 would transfer FAA's so-called "non-safety" functions to the DOT; and H.R. 7850 would transfer FAA's safety functions to a new and independent Air Safety Administration.

For the record, TAA is a national transportation policy organization composed of transport users, suppliers, investors, and carriers of all modes (air, freight forwarder, motor, pipeline, rail, and water) who work cooperatively to develop and implement national policies designed to maintain the strongest possible U.S. transportation system under private enterprise principles.

When the U.S. Department of Transportation was created in 1966, such action had the strong support of TAA, based on the following policy statement that was formally approved by the 115-member TAA Board of Directors:

> "TAA favors the establishment of a Cabinet-level Department of Transportation within which would be centralized the major non-regulatory transport functions of the Federal Government which the Executive Branch of the Government is empowered to administer. The Association strongly opposes any transfer to such a Department of economic regulatory functions, such as control over rates, entry and routes, from the Civil Aeronautics Board, Federal Maritime Commission and Interstate Commerce Commission, which should be independent agencies directly responsible to the Congress."

One of the principle reasons for TAA's support of the creation of DOT was the need to "coordinate and harmonize the fractionalized policy-developing processes relating to non-economic transport matters under a single executive body." TAA policymakers for a number of years had expressed growing concern about the "single modal" policy approach long applicable to the transportation industry, which made it difficult, if not impossible, to seek solutions to non-economic national transport problems on an across-the-board, rather than piecemeal, basis.

While there were differences of op[illegible]on about the need to continue the then Federal Aviation Agency as an independent agency, the consensus of views within TAA was to support its inclusion in the new DOT. The commercial aviation industry was no longer an infant industry deserving specialized policy consideration, but, in TAA's view, a mature segment of the nation's transportation industry that henceforth should be considered along with the other modes collectively from the standpoint of U.S. financial support, R&D programs, and transportation safety activities.

As noted in the TAA policy above, we make a clear distinction, however, with respect to economic regulation (e.g., ratemaking, operating rights, exit, etc.), which we firmly believe should be carried out by independent agencies directly responsible to the Congress. As to safety matters, TAA fails to see any clear-cut need for separating, at the policy level, FAA's airport/airways programs and its other functions such as aircraft and pilot certification, R&D programs, and airway flight safety rules. While there may be need, from an internal organizational standpoint, for separation of these various responsibilities within FAA, we believe they all are so safety-oriented and interrelated that they should be considered as a whole from a policy standpoint.

Unless strong evidence can be shown to justify a separation such as proposed in these bills, TAA believes the present organizational structure of FAA should remain as is with respect to its aviation safety responsibilities. While we are well aware of the serious concerns expressed in recent studies about the FAA's handling of certain aviation safety matters, we do not believe the proposed solutions call for major restructuring of FAA from an organizational standpoint. The creation of an independent FAA with a single-modal purpose could stimulate demands for similar treatment of other transport safety activities of DOT. If we split FAA's aviation safety responsibilities between two U.S. agencies, we probably would create duplicative programs in the aviation safety field--in addition to the aviation safety activities of the National Transportation Safety Board, which, in part, are similar to those of the FAA.

The consideration of legislation of such potentially cumulative impact should, therefore, be given careful analysis before any action is taken. TAA, therefore, urges that your Subcommittee not support any of these three aviation safety bills at this time. We request that this letter be made part of the transcript of hearings on H.R. 351, H.R. 6771, and H.R. 7850.

Sincerely,

Paul Tierney

cc: Members of House Public Works
and Transportation Committee

best copy available